



In a report dated May 16, 2007, Dr. Michael L. Montgomery, Board-certified in orthopedic surgery, stated:

“[Appellant] is seen for evaluation of work-related right shoulder pain. He injured himself on March 19, 2007 while working. [Appellant] said he squatted down and when he came up he hit his head on a steel bar. He said at that time he had kind of a shot of numbness and pain down his arm but it only lasted for less than a day, but since that time he has had just an aching pain generally in his right pectoral girdle and shoulder. [Appellant] says it does n[o]t seem to be activity mediated, it just kind of aches all the time. He denies numbness or tingling in his hands. [Appellant] denies any problems with his neck. He says he does n[o]t have any head problems from the injury. [Appellant] denies previous shoulder problems. He has not had any physical therapy or specific treatment. [Appellant] says he is taking an anti-inflammatory medication twice a day but he does n[o]t know the name of it.”

Dr. Montgomery asserted that appellant was experiencing right shoulder pain secondary to head trauma, etiology unknown. He stated that appellant probably had some subclinical impingement syndrome which might have predated his injury. Dr. Montgomery opined that whatever neurologic symptoms appellant sustained from the head injury might have caused him to develop a little imbalance in pectoral girdle musculature. He therefore recommended that appellant undergo therapy and begin a strengthening program. Dr. Montgomery noted that appellant had continued with full duty since the March 19, 2007 work incident and did not believe that his work had any affect on his right shoulder pain; he therefore permitted him to continue with regular work.

In a subsequent report dated June 27, 2007, Dr. Montgomery noted that appellant’s right shoulder pain level was approximately the same it had been during his previous visit, mainly in the right trapezius area and radiating into his neck. He related that appellant had no numbness or tingling in his hand, although he did experience some neck pain and pain with certain movements. Dr. Montgomery stated that appellant had full range of motion of his right shoulder on examination with some discomfort in the upper pectoral girdle posteriorly. He noted no specific areas of tenderness, with no muscle spasms or trigger points and negative impingement and apprehension signs; appellant showed good strength about his shoulder with little posterior pectoral girdle pain. Dr. Montgomery opined that appellant had neck and right pectoral girdle pain secondary to head trauma. He indicated that he did believe that appellant had impingement syndrome, but recommended that he undergo a magnetic resonance imaging (MRI) scan to determine whether or not he had a herniated disc. Dr. Montgomery again recommended that appellant continue with normal work status.

In a July 13, 2007 report, Dr. Montgomery noted that the results of a July 11, 2007 cervical MRI scan showed minimal degenerative change but no evidence of stenosis or disc rupture. He stated that appellant’s symptoms and examination findings were unchanged from his previous visit. Dr. Montgomery reiterated his previously stated impression of neck and right pectoral girdle pain secondary to head trauma. He related that he told appellant that he did not think there was any serious problem and that his symptoms should resolve over time.

Dr. Montgomery recommended stretching of his neck and pectoral girdle and stated that he expected appellant's symptoms to resolve.

In a report dated August 29, 2007, Dr. James D. Seeman, a Board-certified family practitioner, stated that he had been treating appellant since March 19, 2007. He stated that appellant should be restricted to light duty as of August 29, 2007, with restrictions of no overhead lifting or reaching, no lifting greater than 10 pounds and no repetitive pulling or pushing. Dr. Seeman stated that appellant would be reevaluated by a neurologist on September 14, 2007.

By letter dated August 29, 2007, the employing establishment noted that it had received Dr. Seeman's report containing work restrictions and his recommendation that appellant work light duty. It stated that appellant's supervisor had been advised to have appellant file a Form CA-2a recurrence of disability form and supply bridging medical documentation relating his current condition to his work-related contusion.

In a September 16, 2007 report, the Office medical adviser reviewed the medical evidence of record and determined that it did not support the acceptance of a right shoulder condition.

By decision dated September 19, 2007, the Office denied appellant's request to accept a consequential shoulder injury. It noted that none of the medical reports it received contained a diagnosis of a condition, which was a prerequisite for accepting an additional condition. The Office stated that the medical evidence did not substantiate any medical conditions other than a head contusion or that light or limited duty was necessary due to the accepted condition.

By letter dated October 3, 2007, appellant requested reconsideration. He stated that he had been experiencing constant pain in his neck, shoulder, shoulder blade and upper arm area since his March 19, 2007 work injury. Appellant asserted that the Office evidently did not receive Dr. Seeman's opinion that his right shoulder condition was causally related to the March 19, 2007 work injury. He also asserted that he had not completed and submitted the CA-2a form, notice of recurrence, as his supervisor recommended, because he did not believe that he had sustained a recurrence of disability based on the definition of recurrence stated on the form.

In a September 28, 2007 report, Dr. Seeman stated that appellant had been experiencing neck and shoulder and arm pain ever since his March 2007 employment injury.

In a report dated October 15, 2007, Dr. Seeman stated that appellant experienced a cold feeling in his right arm and right shoulder and some discomfort in the back of his neck following the March 19, 2007 work incident. He related that appellant was treated at the St. Francis Hospital emergency room and diagnosed with a head contusion and right shoulder strain. Dr. Seeman advised that when he first saw appellant in May 2007, he was favoring his right arm and saying that it was causing him some discomfort with various movements; he did not complain of neck pain or stiffness at that time. On examination that day, appellant showed no specific range of motion problems with the exception of some discomfort with abduction of the shoulder against resistance and discomfort with external rotation of the shoulder against

resistance. Dr. Seeman stated that his opinion at that time was that appellant's shoulder pain might be related directly to the jerking or pulling on the shoulder, though he also noted the possibility of a cervical spine injury. He advised that since appellant was already working he saw no reason to keep him out of work. Dr. Seeman noted that Dr. Montgomery took x-rays of appellant's right shoulder and noted some sclerosis at the greater tuberosity and some anterior beaking of the acromion, but noted no other abnormalities. He stated that, when he examined appellant on August 29, 2007, he complained of continued shoulder, neck and arm pain.

In a report dated September 14, 2007, received by the Office on January 3, 2008, Dr. Jonson Huang, Board-certified in psychiatry and neurology, stated that appellant had right shoulder and right arm pain with numbness, paresthesias and weakness attributable to the March 19, 2007 work injury. He stated that appellant had been evaluated at St. Francis Hospital emergency room on the date of injury, but noted that these records were not available for review. Dr. Huang indicated that appellant did not have cervical radiculopathy.

By decision dated January 4, 2008, the Office affirmed the denial of a consequential injury/expansion of accepted conditions. It noted that Drs. Huang and Seeman had stated that appellant had neck, right shoulder and right arm pain but stated that none of the medical reports or record provided a diagnosed medical condition connected with March 19, 2007 work injury. However, the Office stated that when Dr. Seeman provided work restrictions on August 29, 2007, this constituted a potential recurrence of partial disability for work. It therefore remanded the case for development of a possible recurrence claim based on Dr. Seeman's August 29, 2007 work restrictions. The Office afforded appellant the opportunity to provide factual and medical evidence to support his need for work restrictions.

In a report dated September 28, 2007, Dr. Seeman essentially reiterated his previously stated findings and conclusions. In a December 28, 2007 report, he stated that appellant continued to have complaints of right shoulder pain. Dr. Seeman advised that appellant had aggravated his right shoulder condition the previous day when he slipped and grabbed for the door while attempting to enter a truck; this incident made his shoulder problems more "complicated." Dr. Seeman noted pain across the right shoulder and around the scapula, along with some neck discomfort.

By decision dated February 6, 2008, the Office denied the claim for a recurrence of disability, finding that appellant failed to submit medical evidence sufficient to establish that his need for new work restrictions for work beginning August 29, 2007 was due to the accepted work injury.

By letter dated July 28, 2008, appellant requested reconsideration. He asserted that the original medical documentation from his March 19, 2007 emergency room visit to St. Francis Health Center, documenting a right shoulder strain on March 19, 2007, had been lost. Appellant did not submit any new medical evidence.

By decision dated September 4, 2008, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

### LEGAL PRECEDENT -- ISSUE 1

The claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or factors of employment. As part of this burden the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background establishing a causal relationship.<sup>1</sup>

The basic rule respecting consequential injuries, as expressed by Larson is, “when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment.”<sup>2</sup> The subsequent injury “is compensable if it is the direct and natural result of a compensable primary injury.”<sup>3</sup>

With regard to consequential injuries, the Board has stated that where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury is deemed, because of the chain of causation, to arise out of and be in the course of employment.<sup>4</sup>

### ANALYSIS -- ISSUE 1

In the present case, appellant has not met his burden of proof to establish that his right shoulder condition was a direct consequence of his accepted face, scalp and neck contusions. The medical evidence of record is speculative and lacks sufficient rationale to meet appellant’s burden of proof.

Dr. Montgomery noted in his May 16 and June 27, 2007 reports that appellant had continued complaints of right shoulder pain, which he attributed to the March 19, 2007 employment injury. He stated in his May 16, 2007 report, that appellant had work-related right shoulder pain originating from the March 19, 2007 work incident, secondary to head trauma, etiology unknown. While Dr. Montgomery advised that appellant possibly had some subclinical impingement syndrome predating his injury, he ruled out any impingement syndrome in his June 27, 2007 report. In his June 27, 2007 report, he noted continued complaints of right shoulder pain and ruled out impingement syndrome. While Dr. Montgomery suggests that appellant’s March 2007 work injury could have caused his right shoulder condition, he does not directly attribute appellant’s condition to the March 2007 injury or explain why and how the incident caused the condition.

Dr. Seeman recommended work restrictions in his August 29, 2007 report of no overhead lifting or reaching, no lifting greater than 10 pounds and no repetitive pulling or pushing. He stated in his October 15, 2007 report, that appellant had experienced a cold feeling in his right

---

<sup>1</sup> *Brian E. Flescher*, 40 ECAB 532 (1989).

<sup>2</sup> *Larson, The Law of Workers’ Compensation* § 13.00.

<sup>3</sup> *Id.* at § 13.11.

<sup>4</sup> *Margarette B. Rogler*, 43 ECAB 1034, 1038 (1992).

arm and right shoulder and some discomfort in the back of his neck following the March 19, 2007 work injury and that the St. Francis Hospital emergency room had diagnosed a head contusion and right shoulder strain on that date. Dr. Seeman further stated that when he first saw appellant in May 2007, he was favoring his right arm and saying that it was causing him some discomfort with various movements. He stated that he believed at that time that appellant's right shoulder pain might be related directly to the jerking or pulling on the shoulder. However, Dr. Seeman failed to explain his reasons for this conclusion. The Board has long held that a medical opinion which lacks medical rationale is of diminished probative value.<sup>5</sup>

Dr. Huang's September 14, 2008 report is also insufficient to meet appellant's burden of proof as it is speculative. He noted right shoulder and right arm pain with numbness, paresthesias and weakness, which he indicated were due to the March 19, 2007 work injury. Dr. Huang stated that appellant had been evaluated at the St. Francis Hospital emergency room on the date of injury, but noted that these records were not available for review. He offered no real medical explanation as to how appellant's March 2007 work injury would have caused his right shoulder condition, his opinion is also unrationalized and only speculative at best. The fact that a condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition and employment factors.<sup>6</sup> As appellant failed to submit medical evidence sufficient to establish that his right shoulder condition was a direct consequence of his accepted face, scalp and neck contusions, the Board affirms this part of the Office's January 4, 2008 decision.

### **LEGAL PRECEDENT -- ISSUE 2**

A "recurrence of disability" means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury.<sup>7</sup>

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.<sup>8</sup>

### **ANALYSIS -- ISSUE 2**

In the instant case, the record does not contain any medical opinion showing a spontaneous change in the nature and extent of appellant's injury-related conditions. Indeed,

---

<sup>5</sup> *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>6</sup> *Ruby I. Fish*, 46 ECAB 276 (1994).

<sup>7</sup> 20 C.F.R. § 10.5 (2002).

<sup>8</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); *id.* at § 10.121(a).

appellant has failed to submit any medical opinion containing a rationalized, probative report, which relates his condition or disability as of August 29, 2007 to his accepted face, scalp and neck contusions. For this reason, he has not discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment conditions.

The Office stated in its January 4, 2008 decision, that it would adjudicate the claim as one for recurrence of disability in light of Dr. Seeman's August 29, 2007 report outlining work restrictions which might have been related to the March 19, 2007 work injury, which constituted a potential recurrence of partial disability for work.<sup>9</sup> It therefore remanded the case for development of a possible recurrence claim and allowed appellant the opportunity to provide factual and medical evidence supporting his need for work restrictions based on the March 19, 2007 employment injury. Appellant submitted reports from Drs. Montgomery, Seeman and Huang. Dr. Montgomery stated in his May 16, 2007, report that he was treating appellant for work-related right shoulder pain stemming from the March 19, 2007 work incident, secondary to head trauma, etiology unknown. He asserted that appellant probably had some subclinical impingement syndrome, which might have predated his injury. In his June 27, 2007 report, Dr. Montgomery noted continued complaints of right shoulder pain and ruled out impingement syndrome. As stated above, Dr. Seeman recommended work restrictions in his August 29, 2007 report of no overhead lifting or reaching, no lifting greater than 10 pounds and no repetitive pulling or pushing. He stated in his October 15, 2007 report that appellant had experienced a cold feeling in his right arm and right shoulder and some discomfort in the back of his neck following the March 19, 2007 work injury and that the St. Francis Hospital emergency room had diagnosed a head contusion and right shoulder strain on that date. Dr. Seeman further stated that when he first saw appellant in May 2007, he was favoring his right arm and saying that it was causing him some discomfort with various movements. He stated that he believed at that time that appellant's right shoulder pain might be related directly to the jerking or pulling on the shoulder. While Dr. Seeman noted that x-rays of the right shoulder indicated some sclerosis at the greater tuberosity and some anterior beaking of the acromion, he stated that there were no other abnormalities. Dr. Huang noted right shoulder and right arm pain with numbness, paresthesias and weakness attributable to the March 19, 2007 work injury and stated that appellant had been evaluated at St. Francis Hospital emergency room on the date of injury, but noted that these records were not available for review.

The reports from Drs. Montgomery, Seeman and Huang and disability slip noted complaints of right shoulder pain and indicated that appellant experienced right shoulder pain on March 19, 2007, but did not provide a probative, rationalized medical opinion sufficient to establish that his alleged disability as of August 29, 2007 was causally related to his accepted injuries and accepted medical conditions. Appellant's accepted conditions were face, scalp and neck contusions. There is no medical evidence of record of a spontaneous change in these conditions, which pertain to his upper body; nor is there a rationalized medical opinion which relates his August 29, 2007 work restrictions, based on his complaints of right shoulder pain, to the March 19, 2007 employment injury. Appellant did not submit an opinion containing a diagnosed condition which allegedly caused the recurrence of disability relating to the alleged

---

<sup>9</sup> Pursuant to the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.7(b)(1) (May 1997), a claimant has the burden to prove a work stoppage or claim for work restrictions resulting from a worsening of the accepted work-related condition without intervening cause.

right shoulder condition. To establish causal relationship between this condition and the accepted injuries, the medical evidence of record would have to explain with medical rationale how this condition was a consequence of the accepted injury.<sup>10</sup> The reports from the physicians of record offer no medical explanation relating this condition to the accepted injury. Accordingly, the Office properly denied compensation for a recurrence of appellant's work-related face, scalp and neck conditions in its February 8, 2008 decision.

### **LEGAL PRECEDENT -- ISSUE 3**

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.<sup>11</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>12</sup>

### **ANALYSIS -- ISSUE 3**

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. The arguments advanced by appellant in his request letter are cumulative and repetitive of arguments which were previously considered and rejected by the Office. Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

### **CONCLUSION**

Appellant has not met his burden of proof to establish that his right shoulder condition degeneration is a consequential injury of his accepted work injury. The Board finds that he has not met his burden to establish that he was entitled to compensation for a recurrence of disability as of August 29, 2007 causally related to his accepted face, scalp and neck contusion conditions. The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

---

<sup>10</sup> *Carlos A. Marrero*, 50 ECAB 117 (1998).

<sup>11</sup> 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

<sup>12</sup> *Howard A. Williams*, 45 ECAB 853 (1994).



**ORDER**

**IT IS HEREBY ORDERED THAT** the September 4, February 6 and January 4, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 21, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board