United States Department of Labor
Employees' Compensation Appeals Board

M.R., Appellant	)	
and	)	**Docket No. 09-869**
	)	**Issued: January 22, 2010**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Windsor Locks, CT, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 12, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated July 29, 2008 and January 15, 2009 denying her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a recurrence of disability beginning June 20, 2007 causally related to his accepted work injuries; and (2) whether appellant sustained a consequential low back condition causally related to his accepted work injuries.

FACTUAL HISTORY

On July 5, 2005 appellant, then a 43-year-old transportation security screener, filed an occupational disease claim alleging that he developed tendinitis of the right hand, wrist, elbow

and shoulder as a result of repetitive motion activities in the performance of duty. He stopped work on July 6, 2005. On September 2, 2005 the Office accepted the claim for right bicipital tendinitis, right lateral epicondylitis, right hand strain and right carpal tunnel syndrome for which appellant underwent an authorized surgical release on December 20, 2005. On February 2, 2006 appellant underwent an authorized right shoulder arthroscopy.[1]

In reports dated April 20, 2006, Dr. Philip Reilly, a Board-certified orthopedic surgeon and attending surgeon, advised that appellant could perform light duty with no over the shoulder work and no baggage handling. He indicated that sedentary work and passenger screening was permitted. Dr. Reilly noted that appellant should go to physical therapy if no sedentary work was available.

In a letter dated May 4, 2006, the employing establishment informed the Office that appellant was approved for limited duty and returned to his preinjury position, on limited duty, on April 30, 2006. Dr. Reilly submitted June 29 and September 11, 2006 reports noting that appellant was doing well and could work his security screener job subject to permanent restrictions on lifting more than 25 pounds or repetitive lifting of more than 5 pounds.

By letter dated May 10, 2007, the Office referred appellant to Dr. Frank H. Schildgen, a Board-certified orthopedic surgeon, for a second opinion. Dr. Schildgen was asked to determine the nature of appellant's condition, extent of disability and need for treatment. In a June 11, 2007 report, he reviewed appellant's history of injury and medical treatment. Dr. Schildgen diagnosed impingement syndrome of the right shoulder, right carpal tunnel syndrome and advised that appellant had a deep laceration to the left hand with contracture to a mild degree of his left fifth finger, which was causally related to his work injury. He advised that appellant could work eight hours a day in his present position as an information officer. Dr. Schildgen did not believe it is realistic to reassign appellant in a position which required baggage handling.

In a letter dated June 21, 2007, Richard Schmid, a management analyst with the employing establishment, informed the Office that appellant stopped work on June 20, 2007. He presented a June 20, 2007 disability certificate from Dr. Glenn Alli, Board-certified in internal medicine, who placed appellant off work until further notice.

In a July 27, 2007 attending physician's report, Dr. Alli diagnosed right shoulder impingement syndrome and right carpal tunnel syndrome and left hand contractions. He checked the box "yes" in response to whether he believed appellant's condition was caused or aggravated by an employment activity. Dr. Alli noted that appellant developed lumbar radiculopathy as the result of the accepted conditions. He opined that appellant was totally disabled since December 30, 2004. Dr. Alli completed a work capacity evaluation on August 27, 2007 and reiterated that appellant was unable to work for eight hours a day for an indefinite time frame. He noted that he was using medication for pain control which precluded safe driving or productive work.

[1] Appellant also has claims for his injuries to his left and right hands in August 2002, and October and December 2004, which were accepted under claim numbers xxxxxx198, xxxxxx111 and xxxxxx044. The Office also denied a previous claim for bilateral carpal tunnel syndrome as of March 15, 2005 under claim number xxxxxx078.

On September 9, 2007 appellant filed a recurrence of disability claim beginning June 20, 2007. He attributed his low back and left leg conditions to overcompensating because of the limited use of his upper body. Appellant alleged a consequential injury to his low back, which caused his disability. The employing establishment controverted the claim. The employing establishment noted that it provided appellant light duty in accordance with his restrictions and that his job duties were sedentary in nature.

On September 9, 2007 appellant described several work-related injuries from August 2002 to December 2004 that contributed to his condition. The injuries caused him to be limited in his upper body and he had to overcompensate with his back and low body.

By letter dated October 15, 2007, the Office advised appellant that additional factual and medical evidence was needed. It requested a physician's opinion on the recurrence claim and granted 30 days within which to submit such evidence. No additional medical evidence was received.

In a decision dated July 29, 2008, the Office denied appellant's claim for a recurrence of disability beginning June 20, 2007 or a consequential low back condition. It found that the evidence was insufficient to establish that his claimed disability for work was due to the accepted work injury.

On August 1, 2008 appellant's representative requested a hearing, which was held on November 12, 2008. Appellant confirmed that his modified duties included checkpoint service, roaming the airport and offering assistance, providing directions and giving guidance to passengers, as an information officer. He also noted that he had back surgery in October 2007.

In an October 10, 2008 letter, appellant reiterated that his back condition was the result of overcompensating for all of his other work-related conditions. He previously filed a claim for an injury to his back. In his prior back claim, appellant was given medication and placed off work for a few weeks. He advised that he was suffering from degenerative disc disease as a result of the previous injuries to his back and right side.

In an August 29, 2008 report, Dr. Alli noted that appellant had chronic lumbar pain due to lumbar disc disease, as well as other musculoskeletal conditions. He advised that appellant had severe daily pain that limited his activities to standing less than five minutes and sitting less than five minutes before positional changes were required. Appellant's symptoms required ongoing opiate therapy. Dr. Alli noted that appellant underwent lumbar disc surgery in November 2008. However, appellant's pain levels remained substantial and he was physically unable to perform the duties of a transportation security screener. Dr. Alli noted that he had reviewed the basic employment standards for a security screener and opined that appellant did not have "adequate joint mobility, dexterity, range of motion, strength and stability to lift and move up to 70 pounds." He explained that appellant would not be able to pass a drug test, due to his treatment with opiate medications. Dr. Alli found that appellant was totally disabled from performing the duties of a security screener.

By decision dated January 15, 2009, an Office hearing representative affirmed the July 29, 2008 decision.

LEGAL PRECEDENT -- ISSUE 1

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[2]

Office regulations define the term "recurrence of disability" as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition that had resulted from a previous injury or illness without an intervening injury or a new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury is withdrawn or when the physical requirements of such an assignment are altered so that they exceed the employee's physical limitations.[3]

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for right bicipital tendinitis, right lateral epicondylitis, right hand strain and right carpal tunnel syndrome. Appellant returned to modified duties after his work injury on April 30, 2006. He claimed a recurrence of disability commencing June 20, 2007.

The Board finds that appellant has not established a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements. Regarding his light-duty requirements, appellant did not allege that his light-duty requirements were changed and evidence from the employing establishment supports that light duty remained available until appellant stopped work.

The medical evidence does not establish a change in the nature and extent of appellant's injury-related condition. Appellant did not submit a medical report from a treating physician which adequately explained why any disability beginning June 20, 2007 would be related to the accepted injury.

A June 20, 2007 disability certificate from Dr. Alli indicated that appellant was placed off work until further notice. The Board notes that Dr. Alli did not provide any explanation as to why appellant was disabled due to residuals of his accepted condition. His report does not address the accepted conditions or otherwise explain how there was a spontaneous change in appellant's condition that resulted from the work injury. Medical conclusions unsupported by

[2] *Conard Hightower*, 54 ECAB 796 (2003).

[3] 20 C.F.R. § 10.5(x).

medical rationale are of diminished probative value and are insufficient to establish causal relation.[4]

In a July 27, 2007 attending physician's report, Dr. Alli checked the box "yes" in response to whether he believed appellant's condition was caused or aggravated by an employment activity and noted that appellant developed lumbar radiculopathy as the result of the accepted conditions. He opined that appellant was totally disabled since December 30, 2004. Dr. Alli also completed a work capacity evaluation dated August 27, 2007 advising that appellant was unable to work for eight hours a day for an indefinite time frame. He noted that appellant was utilizing medication for pain control, which "precludes safe driving and productive work." Dr. Alli's opinion appears based on an inaccurate history since he stated that appellant was totally disabled since December 30, 2004. The record, however, shows that appellant worked limited duty before stopping work on June 20, 2007. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.[5] The Board also notes that checking of the box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[6] Dr. Alli failed to discuss how the accepted employment-related condition changed such that appellant could not perform the light-duty job during the claimed period.

In an August 29, 2008 report, Dr. Alli noted that appellant had chronic lumbar pain due to lumbar disc disease, as well as other musculoskeletal conditions. While he noted that appellant was unable to work in his position as a transportation security screener due to daily pain and treatment comprised of therapy, the record reflects that appellant had returned to modified duty on April 20, 2006 in accordance with Dr. Reilly's restrictions and did not perform duties outside of these restrictions. Dr. Alli did not specifically support that disability was due to appellant's accepted conditions. The Board notes that this report is of limited probative value as he failed to address how the accepted employment-related condition changed such that appellant could not perform the light-duty job during the claimed period.[7]

The Office properly denied appellant's claim for a recurrence of disability beginning June 20, 2007 causally related to the June 30, 2005 employment injury.

[4] *Albert C. Brown*, 52 ECAB 152 (2000).

[5] *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[6] *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

[7] *See K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

LEGAL PRECEDENT -- ISSUE 2

Regarding consequential injuries, the basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[8]

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.[9] To establish a causal relationship between the condition claimed, as well as any attendant disability, and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.[10] Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[11] Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[12]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[13]

ANALYSIS -- ISSUE 2

Appellant alleges that he sustained a back condition due to overcompensating for his accepted conditions. The Board finds that he has not established a consequential condition related to his accepted employment injuries. The medical evidence lacks sufficient rationale to meet appellant's burden of proof.

A June 20, 2007 disability certificate from Dr. Alli indicates that appellant was placed off work until further notice. The Board notes that there is no explanation as to why any back condition developed as a consequence of the accepted conditions. Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to

[8] *S.M.*, 58 ECAB 166 (2006), *citing* A. Larson, *The Law of Workers' Compensation* § 10.01 (2004).

[9] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[10] *Jennifer Atkerson*, 55 ECAB 317 (2004).

[11] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[12] *Leslie C. Moore*, 52 ECAB 132 (2000).

[13] *Ernest St. Pierre*, 51 ECAB 623 (2000).

establish causal relation.[14] In a July 27, 2007 attending physician's report, Dr. Alli checked the box "yes" in response to whether he believed appellant's condition was caused or aggravated by an employment activity and noted that appellant developed lumbar radiculopathy as the result of the accepted conditions. He also completed a work capacity evaluation dated August 27, 2007 advising that appellant was unable to work for eight hours a day for an indefinite time frame. As noted, the checking of the box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[15] However, Dr. Alli did not explain the reasons why a diagnosed back condition would have been caused by any of the accepted conditions. In his August 29, 2008 report, he addressed appellant's disability status and noted that appellant had chronic lumbar pain due to lumbar disc disease, as well as other musculoskeletal conditions. However, Dr. Alli did not specifically address causal relationship such as how any diagnosed back condition was a direct and natural result of any of appellant's accepted conditions.[16]

Appellant did not submit any other medical evidence to support a consequential condition beginning June 20, 2007 which was causally related to the work injury of June 30, 2005.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability beginning June 20, 2007 causally related to his accepted work injuries. The Board also finds that he did not meet his burden of proof to establish that he sustained a consequential low back condition beginning June 20, 2007 causally related to his accepted work injuries.

[14] *Albert C. Brown*, 52 ECAB 152 (2000).

[15] *Supra* note 6.

[16] *See supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the January 15, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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