

**United States Department of Labor
Employees' Compensation Appeals Board**

C.O., Appellant)

and)

**DEPARTMENT OF HOMELAND SECURITY,
TRANSPORTATION SECURITY
ADMINISTRATION, Portland, OR, Employer**)

**Docket No. 10-189
Issued: July 15, 2010**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 26, 2009 appellant filed a timely appeal from the July 28, 2009 merit decision of the Office of Workers' Compensation Programs denying his left shoulder injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant's left shoulder injury was a compensable consequence of his accepted low back condition.

FACTUAL HISTORY

The Office accepted that on January 4, 2006 appellant, then a 46-year-old transportation security screener, sustained a lumbar strain and lateral disc protrusion at L4-5 due to lifting bags

on that date. It paid wage-loss compensation for periods of disability.¹ In February 2006, appellant began participating in a physical therapy program that was approved by the Office for treatment of his January 4, 2006 work injury. He participated in physical therapy sessions an average of three times a week.²

Appellant claimed that he sustained a left shoulder injury in March 2008 due to lifting weights while participating in an approved physical therapy program. He noticed a gradual increase in his left shoulder symptoms over time.

The record contains copies from appellant's physical therapy sessions in Spring 2008.³ The therapy sessions noted that he performed reverse butterflies (*i.e.*, swinging handheld weights back and forth to both sides) with weights of up to 22 pounds. By April 2008, appellant complained of pain in the deltoid muscle of his left shoulder.

On May 13, 2008 Dr. Hart indicated that appellant's back condition was at maximum medical improvement and returned him to work with no restrictions. Dr. Hart noted, however, that appellant had developed a little tendinitis at the left deltoid muscle at the upper-third humeral junction while engaging in physical therapy sessions. He stated that this condition was expected to resolve in time on its own with no expected residuals.⁴

In a November 14, 2008 report, Dr. David T.C. Lee, an attending Board-certified internist, stated that appellant reported that he hurt his left shoulder in March 2008 while performing reverse butterflies with weights up to 22 pounds in physical therapy sessions for a low back injury. Appellant indicated that his left shoulder pain increased over time. Dr. Lee stated that appellant used his left arm to some extent in his trucking industry job, noting:

“Left shoulder that failed [physical therapy] and steroid injection once. I do n[o]t think repeat injection is helpful. Plan: I would suggest [magnetic resonance imaging testing] and discussed this with Dr. Hart as clearly [physical therapy] in March was the initial precipitating event. I do believe going to work without completely recovering may have been exacerbation.”

Appellant submitted other medical evidence listing problems with his left shoulder. In a December 29, 2008 report, Dr. Hart advised that appellant had a positive impingement sign in his left shoulder. In a January 12, 2009 report, Dr. Anthony S. Wei, an attending Board-certified orthopedic surgeon, stated that appellant reported that his left shoulder problems started after he performed reverse butterflies during physical therapy sessions. He diagnosed left rotator cuff

¹ Appellant initially returned to light-duty work for the employing establishment and then returned to regular duty. In August 2007, he underwent decompression surgery of his low back which was authorized by the Office. Appellant stopped work and received compensation for periods of disability.

² On April 15, 2008 Dr. John L. Hart, an attending osteopath and Board-certified physical medicine and rehabilitation, noted that appellant's low back condition had improved and reduced his physical therapy sessions to two times per week.

³ Documents from this period show that appellant's physical therapy program was approved by the Office.

⁴ In June 2008, appellant returned to work performing tie-down work in the trucking industry.

tendinitis with a possible articular-sided partial tear. The findings of a January 9, 2009 magnetic resonance imaging scan included, a subtle partial thickness articular-sided tear of the distal anterior supraspinatus tendon measuring approximately one centimeter.

In a July 28, 2009 decision, the Office denied appellant's claim on the grounds that he did not submit sufficient factual or medical evidence to establish that he sustained a left shoulder injury while participating in an approved physical therapy.

LEGAL PRECEDENT

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.⁵

It is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁶

ANALYSIS

The Office accepted that on January 4, 2006 appellant sustained a lumbar strain and lateral disc protrusion at L4-5 due to lifting bags. Appellant claimed that in Spring 2008 he sustained a left shoulder injury as a consequence of a physical therapy program that was approved for treatment of his January 4, 2006 work injury. Appellant first noticed his left shoulder symptoms in March 2008 after performing reverse butterflies with 22-pound weights in both arms during his sessions.⁷ The Board notes that the evidence of record establishes that in Spring 2008 he participated in a physical therapy program, authorized by the Office for treatment of his January 4, 2006 work injury, which included the performance of reverse butterflies with weights in both arms weighing up to 22 pounds.

While none of the reports from appellant's attending physicians are completely rationalized, they are generally consistent in indicating that he sustained a left shoulder injury during physical therapy.

On May 13, 2008 Dr. Hart, an attending osteopath and Board-certified in physical medicine and rehabilitation, noted that appellant had developed a tendinitis at the left deltoid muscle at the upper-third humeral junction while engaging in physical therapy sessions. He

⁵ *Charles W. Downey*, 54 ECAB 421 (2003).

⁶ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

⁷ On appeal appellant continued to assert that his left shoulder condition was caused by the approved physical therapy sessions in Spring 2008.

stated that this condition was expected to resolve in time on its own.⁸ In a November 14, 2008 report, Dr. Lee, an attending Board-certified internist, stated that appellant reported that he hurt his left shoulder in March 2008 while performing reverse butterflies with weights up to 22 pounds in physical therapy. He advised that appellant's left shoulder had failed physical therapy and suggested further diagnostic testing. Dr. Lee stated that the physical therapy in March 2008 clearly "was the initial precipitating event."⁹ The Board finds that the medical evidence of record raises an uncontroverted inference between appellant's claimed left shoulder condition and the physical therapy sessions. The evidence is sufficient to require the Office to further develop the medical evidence.¹⁰

The case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained a work-related left shoulder injury during approved physical therapy sessions in Spring 2008. After such development as the Office deems necessary, an appropriate decision shall be issued.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant sustained a left shoulder injury as a consequence of physical therapy for his accepted low back injury.

⁸ Later medical reports showed that appellant continued to have left shoulder problems through at least mid 2009.

⁹ The findings of January 9, 2009 magnetic resonance imaging scan testing showed, among other findings, a subtle partial thickness articular-sided tear of the distal anterior supraspinatus tendon measuring approximately one centimeter. Dr. Lee suggested that appellant's trucking industry work, which started in June 2008, might have further exacerbated the left shoulder injury caused by physical therapy.

¹⁰ See *Robert A. Redmond*, 40 ECAB 796, 801 (1989).

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2009 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: July 15, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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