United States Department of Labor
Employees' Compensation Appeals Board

M.G., Appellant	)	
and	)	**Docket No. 09-1818**
	)	**Issued: June 14, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Las Vegas, NV, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 10, 2009 appellant timely appealed a May 19, 2009 merit decision of the Office of Workers' Compensation Programs regarding the termination of his medical compensation benefits for temporary aggravation of consequential conditions for a limited time period.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits effective August 25, 2008.

[1] After appellant's July 10, 2009 appeal to the Board of the Office's May 19, 2009 decision, appellant requested reconsideration and the Office issued an October 14, 2009 decision that denied modification of the May 19, 2009 decision. Under *Douglas E. Billings*, 41 ECAB 880 (1990), the Office's October 14, 2009 decision is null and void as the Office and the Board may not have concurrent jurisdiction over the same issue.

FACTUAL HISTORY

On June 15, 2004 appellant, then a 47-year-old city carrier, filed an occupational disease claim for a right knee condition. The Office accepted that appellant sustained a work-related right knee strain. It subsequently accepted a tear to the right knee medial meniscus as well as a consequential lumbar strain as a result of compensating for his knee condition.[2] On April 6, 2006 appellant underwent an Office authorized arthroscopic partial medial meniscectomy of the right knee. On June 26, 2007 he underwent a right total knee replacement that the Office authorized. Appellant returned to sedentary duty on April 20, 2006 and regular duty as a supervisor on September 27, 2007.[3]

Appellant subsequently claimed left shoulder and lumbar spine injuries as a consequence of his right knee injury. He submitted diagnostic testing, including magnetic resonance imaging (MRI) scan and x-ray reports, physical therapy notes and nurse's reports. In an August 8, 2007 report, Dr. Michael Crovetti, an osteopath and orthopedic surgeon, noted that appellant injured his trapezius while undergoing outpatient therapy for his total knee arthroplasty. He advised that appellant was pulling himself up and injured his trapezius muscle. Appellant recommended adding trapezius therapy to appellant's physical therapy regime. On August 17, 2007 Dr. Crovetti found evidence of left shoulder rotator cuff disease and recommended an MRI scan to rule out a tear.

On October 17, 2007 the Office denied appellant's request for an upper extremity MRI scan. It noted that this was not customary treatment for the accepted lumbar and right knee accepted conditions and that it received no medical information with a physician's opinion on why or how this requested medical treatment was related to the accepted conditions in his claim. On November 10, 2007 appellant requested an oral hearing.

Appellant also sought expansion of his claim to include consequential injuries to his left knee, left shoulder, cervical spine, right ankle and right foot. He submitted various records including an October 3, 2007 duty status report from Dr. Crovetti who diagnosed right knee degenerative joint disease, left knee pain and lumbar spine. In a November 26, 2007 progress report, Dr. Crovetti noted that an MRI scan of the cervical spine showed C6-7 herniated nucleus pulposus. In a November 26, 2007 duty status report, he diagnosed appellant with right knee degenerative joint disease, left knee pain and lumbar radiculitis. In a November 28, 2007 duty status report, Dr. Crovetti diagnosed right knee degenerative joint disease, left knee pain and left shoulder strain. He indicated "yes" in the box marked "diagnosis due to injury." In a January 2, 2008 treatment note, Dr. Crovetti advised that a left shoulder MRI scan showed partial tearing and anterior labral tear with possible partial articular surface tearing. In a January 2, 2008 duty status report, he advised that appellant's right knee degenerative joint disease, left knee pain and

[2] The Office did not accept a herniated lumbar disc or aggravation of osteoarthritis of the lumbar spine.

[3] On December 6, 2006 the Office granted appellant a schedule award for 14 percent permanent impairment to the right leg. On October 15, 2008 it issued him a schedule award for an additional 23 percent permanent impairment to the right leg, for a total award of 37 percent. Appellant has not appealed the October 15, 2008 schedule award decision.

left shoulder strain were due to the work injury of March 1, 2004 by marking "yes" in the box marked "diagnosis due to injury."

On November 2, 2007 Dr. Gregory Middleton, an internist and Board-certified rheumatologist, noted appellant's history and treatment. He diagnosed cervical spondylosis/left rotator cuff tendinitis. In a November 19, 2007 report, Dr. Reynold L. Rimoldi, a Board-certified orthopedic surgeon, noted appellant's cervical spine and left shoulder symptoms which appellant attributed to ambulating with a cane. He diagnosed cervical disc degeneration with overlying cervical protrusions. On January 7, 2008 Dr. Rimoldi advised that appellant's left shoulder MRI scan indicated a labral tear, a small partial thickness tear of the supraspinatus tendon and supraspinatus and infraspinatus tendinosis and acromioclavicular joint arthrosis.

In a February 26, 2008 report, Dr. Michael Childs, a podiatrist, advised that appellant had right leg neuritis that might be associated with increased swelling after surgery, possibly due to compression stockings. A tingling sensation followed the nerve roots and a short Achilles tendon, which exacerbated the positive Tinel's sign when appellant everted the foot. Dr. Childs opined that, if the short Achilles tendon was worsening appellant's symptoms, it would be due to a double crush syndrome from his previous injury to the nerve and from his manner of ambulation that continued to cause nerve tension or pressure. He noted, however, that these would be symptoms only on the medial and plantar aspect of the foot and would not account for the positive Tinel's sign on the lateral aspect of the foot.

On March 5, 2008 the Office denied expanding appellant's claim to include injuries to the left knee, shoulder, cervical spine, right ankle and right foot. Appellant requested a hearing which was held on March 26, 2008.

Appellant submitted a February 25, 2008 report from Dr. Crovetti who opined that appellant sustained an injury to his left shoulder while pulling himself up from a seated position during rehabilitation of his right total knee arthroplasty. Dr. Crovetti stated that appellant had a left knee strain due to compensating during his recovery and limiting his weight bearing on the right knee due to pain in the early postoperative course. He noted that a November 2007 left shoulder MRI scan showed a partial tear of the supraspinatus tendon and a labral tear of the left shoulder and an x-ray of the left knee showed minimal narrowing of the medial joint space and early arthritic disease. Dr. Crovetti diagnosed partial rotator cuff tear and impingement syndrome and exacerbation of early arthritic disease of the left knee. He indicated these diagnoses were formulated after appellant had right knee surgery and the rehabilitation process began. Dr. Crovetti stated that appellant sustained left shoulder strain, left trapezius strain, cervical strain and left knee strain when he began experiencing pain in those areas during the rehabilitation process.

In a May 6, 2008 report, Dr. Jon James, a podiatrist, provided a history of appellant's loss of sensation in his right lower leg. He stated that he could not comment on whether the cause of the condition was secondary to his right knee surgery.

In a July 14, 2008 decision, an Office hearing representative set aside the October 17, 2007 and March 5, 2008 decisions with respect to whether appellant's total right knee replacement surgery contributed to his left shoulder, left trapezius, cervical or left knee

conditions and remanded the case for the Office to refer appellant for a second opinion. The hearing representative affirmed the portion of the Office's decision which denied that appellant's right lower leg conditions were related consequentially to his right knee surgery.

The Office referred appellant to Dr. Aubrey Swartz, a Board-certified orthopedic surgeon, for a second opinion. In an August 25, 2008 report, Dr. Swartz noted the history of injury, his review of the medical file and set forth findings. Regarding post knee replacement complications such as left shoulder strain, left trapezius strain, cervical strain or left knee strain, he advised there were minor transient straining episodes with respect to utilizing more muscles in his body during the rehabilitation phase of the physical therapy. However, Dr. Swartz indicated that these had all subsided and there was no evidence of further injury or residual due to these complaints. Appellant stated that, during the examination, he had pulling in his left shoulder that was not painful unless he moved his shoulder in a certain way. Dr. Swartz indicated that appellant's left shoulder MRI scan showed multiple degenerative changes. He stated that appellant had naturally occurring age-related degenerative disease that was unrelated to his left knee replacement.

For the low back, Dr. Swartz indicated that appellant had multilevel degenerative disease and had a transient exacerbation with respect to his left knee injury, which was no longer an issue. He stated that appellant was dealing with his preexisting degenerative disease and that his current low back symptoms had no relationship to his original claim. Regarding right ankle and foot numbness since the surgery in the right leg, Dr. Swartz advised that electrodiagnostic studies and other evidence did not confirm that these changes in appellant's right ankle and foot were due to the right total knee replacement. He stated that there was no evidence or any electrodiagnostic studies to either confirm or rule out sensory changes in the right leg after the right total knee arthroplasty. Dr. Swartz stated that it was not a well-known complication of total knee replacement surgery. Regarding injuries to the neck, left trapezius, left shoulder and left knee, he stated that these would be transient flare-ups of preexisting degenerative disease.

In a September 29, 2008 supplemental report, Dr. Swartz advised that appellant was very heavy and obese and had degenerative disease in many areas. He noted that appellant would have a predisposition or susceptibility to low back pain or left knee pain based upon his age and his excessive overweight status. Dr. Swartz opined that none of the degenerative changes would have been brought about by physical therapy or over compensating due to the right knee injury. He opined that any aggravation of the degenerative conditions had resolved at the time of his examination and any further problems associated with those areas were due to nonindustrial degenerative disease.

In an October 7, 2008 decision, the Office expanded the claim to include temporary aggravation of degenerative disease of the lumbar spine, cervical spine, left shoulder and left lower extremity resolved by August 25, 2008.

Appellant requested a hearing and, on February 12, 2009, a telephonic hearing was held. He submitted a written statement, copies of diagnostic testing, a September 29, 2008 report from Dr. Roman Sibel, a Board-certified orthopedic surgeon, regarding appellant's right ankle and lower extremity pain and numbness and medical reports.

In October 22 and December 15, 2008 and February 4, 2009 reports, Dr. Rimoldi reported on appellant's left shoulder. In a November 24, 2008 report, he reported on appellant's lumbar and cervical spine. Dr. Rimoldi opined, in his December 15, 2008 report, that appellant's injuries to the cervical spine and left shoulder were sustained while in physical therapy after a total knee replacement. He stated that appellant experienced left knee pain while favoring his left knee in his postoperative rehabilitation. Reports from Dr. Gary D. Morris, a Board-certified orthopedic surgeon, dated November 6 and 19, 2008 and February 5 and March 25, 2009 reports, reported on the status of appellant's left knee. In March 26 and April 17, 2009 progress reports, Dr. Crovetti advised no further right knee treatment was required. Medical approval for further treatment regarding appellant's left shoulder and left knee was requested.

By decision dated May 19, 2009, an Office hearing representative affirmed the Office's October 7, 2008 decision.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[4] It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.[5] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[6] The fact that the Office accepted an employee's claim for a specific period of disability does not shift the burden of proof to the employee. The burden is on the Office with respect to the period subsequent to the date of termination or modification.[7] The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[8]

Under the Federal Employees' Compensation Act, when employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation. When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased, even if the employee is medically disqualified from continuing employment due to the underlying condition.[9]

[4] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

[5] *J.M.*, 58 ECAB 478 (2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

[6] *T.P.*, 58 ECAB 524 (2007); *Larry Warner*, 43 ECAB 1027 (1992).

[7] *See Elsie L. Price*, 54 ECAB 734, 739 (2003); *Raymond M. Shulden*, 31 ECAB 297 (1979); *Anna M. Blaine (Gilbert H. Blaine)*, 26 ECAB 351 (1975).

[8] *See Raymond W. Behrens*, 50 ECAB 221 (1999).

[9] *Id.*

ANALYSIS

On the same day, the Office advised appellant of the acceptance of his claim for temporary aggravation of degenerative disease of the lumbar spine, cervical spine, left shoulder and left lower extremity, it also found that those accepted conditions had resolved effective August 25, 2008. Its acceptance of a claim for a specified period does not shift the burden of proof to the claimant.[10] The Office based its decision to terminate benefits on the reports of Dr. Swartz, the second opinion physician, who opined that appellant had sustained a temporary aggravation of his degenerative disease in the lumbar spine, cervical spine, left shoulder and left lower extremity which had resolved at the time of his August 25, 2008 examination and that any problems now associated with those conditions were due to appellant's nonwork-related degenerative conditions.

In his August 25, 2008 report, Dr. Swartz advised that appellant sustained left shoulder strain, left trapezius strain, cervical strain and left knee strain during rehabilitation following his total knee replacement as more muscles were used during the physical therapy and minor transient straining episodes resulted. He indicated that all of the minor straining episodes had subsided and there was no evidence of any further injury or residuals. Dr. Swartz noted appellant's left shoulder MRI scan showed multiple degenerative changes and appellant had no pain in his shoulder unless it was moved in a certain way. He explained that appellant had age-related degenerative disease in his left shoulder which was unrelated to his left total knee replacement. Dr. Swartz indicated that appellant had multilevel degenerative disease in his back and that the transient exacerbation with respect to his left knee injury was no longer an issue and the current back symptoms had no relationship to the current claim. He found that electrodiagnostic studies and the medical evidence did not confirm that sensory changes in appellant's right ankle and foot were due to the right total knee replacement and noted that this was not a well-known complication of total knee replacement surgery. Dr. Swartz advised, in his September 29, 2008 supplemental report, that none of appellant's degenerative changes in the areas complained of resulted from the physical therapy or overcompensation due to the right knee injury. He opined that any aggravation of the degenerative conditions in appellant's neck, left trapezius, left shoulder and left knee were due to nonindustrial degenerative disease and any aggravation had resolved at the time of his August 25, 2008 examination. Dr. Swartz's August 25 and September 29, 2008 reports are based on an accurate factual background and provide sufficient medical rationale for his conclusion that appellant's temporary aggravation of his degenerative disease in the lumbar spine, cervical spine, left shoulder and left lower extremity, had resolved at the time of his August 25, 2008 examination.[11]

The Board notes that Dr. Crovetti's February 25, 2008 report does not provide reasoned support for a greater period of benefits than that accepted by the Office. In his February 25,

[10] *See supra* note 7.

[11] *Michael S. Mina*, 57 ECAB 379 (2006) (in assessing medical evidence, the weight of such evidence is determine by its reliability, its probative value and its convincing quality; the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion, are facts which determine the weight to be given to each individual report).

2008 report, Dr. Crovetti diagnosed appellant with partial rotator cuff tear and impingement syndrome and exacerbation of early arthritic disease of the left knee. He described that appellant suffered the left shoulder injury as he pulled himself up from a seated position while undergoing rehabilitation for his right knee. Dr. Crovetti also indicated that appellant suffered a left knee strain when he placed more weight on the left knee soon after having the right knee surgery, which exacerbated his left knee arthritis. He, however, provided no medical rationale for how or why appellant would develop such conditions to his left shoulder, cervical spine and left lower extremity other than to note that appellant did not have pain in those areas before the surgery and incurred pain and symptoms of the left knee, neck, left shoulder and left trapezius area after the surgery. Dr. Crovetti stated his rationale for opining that appellant sustained left shoulder strain, left trapezius strain, cervical strain, and left knee strain was that during appellant's total right knee replacement rehabilitation process appellant began experiencing pain in those areas. The Board has held that a temporal relationship alone is insufficient to establish causal relationship.[12] The mere assertion that appellant's underlying condition was asymptomatic prior to his total right knee replacement rehabilitation process is not sufficient to show that the total right knee replacement rehabilitation process aggravated the underlying degenerative left knee condition or caused appellant's left shoulder condition. Later reports from Dr. Crovetti did not specifically support any greater period of causal relationship than that accepted by the Office. His earlier reports, in which he related appellant's left knee, neck, left shoulder and left trapezius to the injury, by marking "yes" on the form report to indicate that his findings were consistent with a work-related mechanism are of limited probative value without supporting rationale.[13] In any event, these reports also did not purport to support claim acceptance beyond the period authorized by the Office.

The early reports of Dr. Rimoldi, who treated appellant's accepted consequential conditions, failed to address whether any of the conditions were employment related and, thus, their opinions are of little probative value.[14] These reports also predated the termination of benefits. Later reports from Dr. Rimoldi reported on appellant's left shoulder, cervical spine and lumbar spine conditions. He opined, in his December 15, 2008 report, that appellant's injuries to the cervical spine and left shoulder were sustained while in physical therapy rehabbing after a total knee replacement. While Dr. Rimoldi stated that appellant experienced left knee pain while favoring his left knee in his postoperative rehabilitation, he did not otherwise explain how appellant's postoperative rehabilitation caused or aggravated his left knee condition.[15] Reports

[12] *Louis R. Blair, Jr.*, 54 ECAB 348, 350 (2003).

[13] *Iberta S. Williamson*, 47 ECAB 569 (1996) (an opinion on causal relationship which consists only of a physician checking yes on a medical form report without further explanation or rationale is of little probative value).

[14] *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).

[15] *S.S.*, 59 ECAB ___ (Docket No. 07-579, issued January 14, 2008) (medical reports not containing rationale on causal relation are entitled to little probative value).

from Dr. Morris reported on the status of appellant's left knee, but failed to offer any opinion regarding the cause of the diagnosed condition.[16]

The September 29, 2008 report from Dr. Sibel addressed appellant's right ankle and leg pain and numbness but did not specifically explain how any of these nonaccepted conditions were employment related.[17] In a February 26, 2008 report, Dr. Childs also addressed right foot and leg conditions that were not accepted by the Office. However, he provided only equivocal support for causal relationship by noting that right leg neuritis and appellant's manner of ambulation after his surgery "may" or "could" exacerbate his symptoms.[18]

The Office, therefore, met its burden of proof to terminate appellant's benefits as the weight of the medical evidence indicates that the condition of temporary aggravation of his degenerative disease in the lumbar spine, cervical spine, left shoulder and left lower extremity ceased by August 25, 2008.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's medical compensation benefits for the condition of temporary aggravation of degenerative disease of the lumbar spine, cervical spine, left shoulder and left lower extremity effective August 25, 2008.

[16] *K.W.*, *supra* note 14.

[17] *See T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009) (where a claimant claims that a condition not accepted or approved by the Office was due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence).

[18] *See Jennifer Beville*, 33 ECAB 1970 (1982) (where the Board found a physician's statement that appellant's complaints "could have been" related to an employment incident to be speculative and of limited probative value).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated May 19, 2009 is affirmed.

Issued: June 14, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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