

FACTUAL HISTORY

On May 11, 2007 appellant, then a 59-year-old nurse, filed a traumatic injury claim alleging injury to her left hip and right shoulder when she slipped and fell on a wet floor.² The Office accepted the claim for a neck sprain, right shoulder and upper arm strain and right rotator cuff tear. It authorized right rotator cuff repair surgery, performed on November 26, 2007 by Dr. Jonathan B. Ticker, an orthopedic surgeon. Appellant was placed on the periodic rolls in receipt of wage loss for total disability as of November 25, 2007. She received physical therapy.³ Appellant returned to light-duty work four hours a day on March 10, 2008, which was increased to six hours effective April 9, 2008 within specified restrictions. On May 27, 2008 her light-duty hours were increased to eight hours and she was released to full duty effective June 25, 2008.

On June 14, 2008 an MRI scan was obtained of appellant's left shoulder. Dr. Jonathan D. Klug, a radiologist, found mild acromioclavicular joint arthrosis with a full thickness tear of the rotator cuff with a questionable impact injury to the greater tuberosity of the left humerus. In a June 18, 2009 treatment note, Dr. Ticker recommended light duty based on the left shoulder findings until further evaluation.

On July 24, 2008 the Office received the May 11, 2007 emergency room note of Dr. Marwan Habeeb, an attending Board-certified internist. He noted that appellant complained of left shoulder pain since a slip and fall on a wet floor, landing on her left hip and right shoulder. No clubbing, edema or cyanosis was found on examination of the left shoulder, which was reported as negative for fracture or dislocation. Dr. Habeeb diagnosed right shoulder pain and strain.

The Office referred appellant for a second opinion evaluation to Dr. Bradley L. White, a Board-certified orthopedic surgeon. It forwarded a statement of accepted facts that noted authorization of right shoulder surgery and the MRI scan of the left shoulder. In a November 18, 2008 report, Dr. White reviewed the history of injury and medical treatment. He noted May 11, 2007 medical records and concluded that Dr. Habeeb had made an erroneous mention of the left shoulder, which was the only reference to the left shoulder during the period in which appellant's right shoulder was treated. The MRI scan report was obtained some 13 months following the work injury. While in the emergency room, appellant had her right upper extremity placed in a sling and she was followed by orthopedic surgeons for physiotherapy and diagnostic testing of the right shoulder, with surgery performed on November 6, 2007. Dr. White noted that appellant's right shoulder was much improved, with some intermittent neck pain but no radicular complaints. He listed findings on physical examination, noting positive impingement on flexion and internal rotation of the left shoulder. Dr. White advised that the only injuries arising from

² Dr. Mark Williams, an attending physician, noted the history of injury and noted that x-rays obtained of the right shoulder did not reveal any fracture or dislocation. Due to persistent complaints of pain, he referred appellant for orthopedic consultation. A May 16, 2007 magnetic resonance imaging (MRI) scan of the right shoulder revealed a full thickness tear in the rotator cuff.

³ In a February 19, 2008 letter, the employer requested that Dr. Ticker advise as to when appellant could return to work. It noted that she claimed a consequential left shoulder injury due to overuse of her upper extremity since the injury to her right shoulder.

the May 11, 2007 injury were the right shoulder rotator cuff tear which was resolved and a cervical strain. He found that appellant's left shoulder complaints were not related to the work accident, as there was only a single reference to the left shoulder until the MRI scan report of June 14, 2008.

On December 9, 2008 counsel requested the Office accept appellant's left shoulder condition as related to the May 11, 2007 slip and fall. In a November 30, 2008 report, Dr. Ticker reviewed his treatment of appellant's right shoulder condition and surgery. Following physical therapy, appellant was returned to light duty on March 10, 2008 with limited hours. She was seen on June 4, 2008 for her left shoulder, which she stated was also injured on May 11, 2007. A physical examination of the left shoulder revealed positive Hawkin's sign and impingement and greater tuberosity tenderness. Based on the physical examination, MRI scan and x-ray interpretation, Dr. Ticker diagnosed left impingement syndrome with acromioclavicular joint arthritis for which he recommended surgery. In addressing causal relation, Dr. Ticker stated: "If the history is correct, there is a causal relationship between the fall on May 11, 2007 and the injuries sustained to her shoulders."

The Office found a conflict in medical opinion between Dr. Ticker, for appellant, and Dr. White, for the government, as to the relationship of appellant's left shoulder condition to the accepted injury. On March 17, 2009 the Office referred appellant to Dr. Michael Fracchia, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion.

In an April 1, 2009 report, Dr. Fracchia provided a review of the May 11, 2007 injury, noting that appellant stated that she fell on her left shoulder and hip. When she stood up, she fell again and landed on her right shoulder. He reviewed the statement of accepted facts and noted that appellant was diagnosed with a cervical sprain, sprain of the shoulder and arm and injury to the right rotator cuff. Dr. Fracchia reviewed the history of medical treatment and surgery in November 2007. He noted that at the time of injury, appellant had her right shoulder and spine x-rayed which were negative and the right arm was treated with a sling. During the period of treatment, the left shoulder was not evaluated. On examination, appellant's primary complaint was of left shoulder pain aggravated by activity. There was tenderness found over the supraspinatus and infraspinatus with weakness and a positive Hawkins impingement sign. Dr. Fracchia addressed the contemporaneous medical records, noting that appellant was treated after the fall at work and the history mentioned injury to the right shoulder, right arm and left hip. Appellant was seen on multiple occasions after the fall at work and initial evaluation of May 11, 2007 and treated for right shoulder pain, diagnosed as a rotator cuff tear. Dr. Fracchia noted that while the x-ray ordered that date was for a left shoulder, the entry was for a right shoulder x-ray that was reported as negative. He advised that this one entry was an error of transcription. The additional treatment notes after the injury all supported injury to the right shoulder, with no mention of left shoulder complaints until noted by Dr. Ticker on June 4, 2008. Dr. Fracchia advised that appellant had an excellent result from the surgical repair of the right rotator cuff with minimal disability related to the right shoulder. He concluded that appellant's left shoulder rotator cuff tear was not related to the May 11, 2007 fall at work.

In a January 25, 2010 decision, the Office denied appellant's left shoulder condition as causally related to the accepted injury. It found that Dr. Fracchia's opinion constituted the weight of medical evidence.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.⁴ To establish causal relationship between a claimed condition as well as any attendant disability to an employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a casual relationship.⁵ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ 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 diagnosed condition and the specific employment factors identified by the claimant.⁷ Neither the mere 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.⁸

Where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁹

ANALYSIS

The Office accepted that appellant sustained injury on May 11, 2007 when she slipped and fell at work. It accepted a neck sprain, right shoulder and upper arm strain and right rotator cuff tear and authorized surgery that was performed on November 26, 2007. The Office denied appellant's left shoulder rotator cuff tear was related to this employment injury.

The Board finds that appellant did not meet her burden of proof to establish a work-related left shoulder injury. Dr. Ticker, appellant's treating orthopedic surgeon, opined that she sustained a left shoulder injury as a result of the May 11, 2007 employment injury. Dr. White, a second opinion Board-certified orthopedic surgeon, concluded that her left shoulder condition was unrelated to the May 11, 2007 employment injury. Dr. White noted that there was one erroneous mention of injury to the left shoulder in the original treatment records without any

⁴ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁶ *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

⁷ *Phillip L. Barnes* 55 ECAB 426 (2004); *Leslie C. Moore*, 52 ECAB 132 (2000); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

⁸ *V.W.*, 58 ECAB 428 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000); *W.D.*, Docket No. 09-658 (issued October 22, 2009).

⁹ *Y.A.*, 59 ECAB 701 (2008); *Darlene Kennedy*, 57 ECAB 414 (2006); *D.A.*, Docket No. 09-936 (issued January 13, 2010).

further mention until a June 14, 2008 MRI scan. Due to the conflict in medical opinion, the Office properly referred her for an impartial medical examination.

Dr. Fracchia provided an examination of appellant and a detailed review of the medical records related to her treatment commencing May 11, 2007. He addressed her treatment at the emergency room that day, noting that x-rays were obtained of her right shoulder which was treated with a sling and she was referred for orthopedic follow up. Dr. Fracchia found that the reference to the left shoulder by Dr. Habeeb was a transcription error. In support of this determination, Dr. Fracchia noted that appellant's subsequent medical treatment pertained exclusively to her right shoulder. This consisted of conservative therapy, diagnostic testing and surgery by Dr. Ticker in November 2007. During this period, no examining physician made reference to any left shoulder complaints. Dr. Fracchia noted that Dr. Ticker first noted appellant's left shoulder complaints on June 4, 2008, a year after the fall at work. Based on the history of medical treatment, he concluded that appellant's left shoulder rotator cuff tear was not a result of the May 11, 2007 employment injury.

When a case is referred to an impartial medical examiner to resolve a conflict in evidence, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁰ The Board finds that, the report of the impartial medical examiner, Dr. Fracchia constitutes the special weight of the evidence. The medical report of Dr. Fracchia is well reasoned and based on a thorough review of the medical records and physical examination.

On appeal, counsel contends that appellant's left shoulder condition is causally related to the accepted injury. The Board notes that other than the transcription error of Dr. Habeeb, there was no documentation of any left upper extremity complaint until the February 19, 2008 letter of her employer to Dr. Ticker. At that time, appellant contended that her left shoulder complaints were a consequence of the right shoulder injury based on overuse. Subsequently, she related a history of injury to Dr. Fracchia that she fell twice on May 11, 2007, first on her left shoulder and then on her right shoulder; but this history is not supported by the contemporaneous medical evidence or the claim filed. The accident report noted that appellant left the nursing station and tripped on a wet floor. She fell from a standing position to prone position striking the left hip and right shoulder on the tile floor. Her primary complaint was to the right side of the body, single shoulder. Based on the weight of opinion accorded the impartial medical specialist, the Board finds that the evidence of record does not establish that appellant's left shoulder condition is causally related to the May 11, 2007 employment injury.

CONCLUSION

The Board finds that appellant has not established that her left shoulder condition is causally related to her accepted injury of May 11, 2007.

¹⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 6, 2011
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