

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

G.G., Appellant)

and)

OFFICE OF PERSONNEL MANAGEMENT,)
FEDERAL INVESTIGATIVE SERVICES)
DIVISION, Virginia Beach, VA, Employer)
_____)

**Docket No. 10-772
Issued: January 13, 2011**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 January 27, 2010 appellant filed a timely appeal from the December 23, 2009 merit decision of the Office of Workers' Compensation Programs. 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 sustained a consequential injury to his right hand in the performance of duty on March 3, 2009; and (2) whether appellant sustained a recurrence of disability on March 3, 2009 causally related to his accepted January 29, 2009 neck and low back injuries.

FACTUAL HISTORY

On January 29, 2009 appellant, a 50-year-old special agent, injured his neck and lower back when he slipped on a patch of ice. He filed a claim for benefits, which the Office accepted for neck sprain and lumbar sprain.

In a report dated March 5, 2009, Dr. Ramakrishna Kosuri, a specialist in physical medicine and rehabilitation, stated that appellant fell at home on March 3, 2009 when both of his legs gave out due to severe low back pain. The fall caused a laceration injury to appellant's right hand, which required three to four sutures. Dr. Kosuri related that appellant had complaints of sharp, burning and throbbing pain in the low back area which he rated as 7 to 8 on a scale of 1 to 10. The pain radiated to both lower extremities, greater on the left side, in addition to numbness in both lower extremities. Dr. Kosuri stated that appellant had increased pain with prolonged sitting, standing and walking and bending and experienced sleep disturbance due to pain. Appellant underwent a magnetic resonance imaging (MRI) scan of the lumbar spine on February 27, 2009, which showed minimal posterior disc bulges at the L3-4 and L4-5 levels, with no significant neural foraminal stenosis or central bony canal stenosis.

Dr. Kosuri diagnosed right and left lumbosacral radiculitis, greater on the left than the right, lumbosacral spine strain/sprain, lumbar disc disease, left sacroiliac joint dysfunction and myofascial pain syndrome of the right and left piriformis muscles. He instructed appellant to stay off work and recommended that he undergo a course of physical therapy. Dr. Kosuri stated that he would consider further diagnostic studies and spinal injections depending on appellant's response. In a March 5, 2009 treatment note, he indicated that the claimant would be off work until April 6, 2009.

On March 16, 2009 appellant filed a Form CA-2a claim for benefits, alleging a recurrence of disability on March 3, 2009, which was causally related to his accepted January 29, 2009 employment injury. He related that he had been at home ever since the work injury and sustained a recurrence when both of his legs gave out (due to his work-related back pain) and he fell down some steps, causing injury to his right hand. Appellant also submitted a Form CA-7 on March 16, 2009, which noted that he received continuation of pay from January 30 to March 15, 2009.

In a report dated March 23, 2009, Dr. Paul C. Marinelli, Board-certified in radiology, advised that a cervical MRI scan showed cervical radiculopathy, numbness extending into the left side of the neck and arm, mild disc bulging, uncovertebral joint hypertrophy on the right and right-sided mild foraminal stenosis at the C5-6 level. The study also demonstrated minimal disc bulging and minimal right-sided uncovertebral hypertrophy resulting in minimal foraminal narrowing at C6-7. Dr. Marinelli concluded that appellant had mild disc bulging and foraminal narrowing at C5-6 and C6-7 with no disc protrusion, central canal stenosis or spinal cord abnormality.

In an April 6, 2009 report, Dr. Kosuri reiterated his previous conclusions and diagnoses. Given the fact that appellant showed no improvement in his low back or lower extremity pain despite six physical therapy sessions, he would refer appellant for further diagnostic studies to check for bilateral lumbosacral radiculopathy. In an April 6, 2009 treatment note, Dr. Kosuri kept appellant off work.

In an April 29, 2009 letter to the employing establishment, appellant resigned from his job. He contended that he was no longer able to perform his usual job due to his work-related injuries. Appellant asserted that the March 3, 2009 fall at home and resulting injuries were directly related to the January 29, 2009 employment injury.

In an April 30, 2009 report, Dr. Kosuri stated that appellant complained of low back pain radiating down to his lower extremities. Appellant had resigned from work the previous day due to his low back pain. Dr. Kosuri advised that appellant's back pain was aggravated with prolonged sitting, standing, walking and driving. Appellant underwent a lumbar MRI scan on February 27, 2009 which showed minimal disc space narrowing and posterior disc bulging at L3-4 and L4-5 levels with no central canal or foraminal stenosis. Dr. Kosuri stated that his neurological examination of the lower extremities was unchanged from the previous examination and that results of nerve conduction studies and electromyogram were within normal limits. He referred appellant for chiropractic treatment.

Appellant underwent an MRI scan of his right hand on June 8, 2009 which demonstrated synovial thickening at the second metacarpal phalangeal joint as well as small subchondral cysts or erosions in the distal third metacarpal that may indicate early changes of a developing inflammatory arthropathy and there was also a minimal degree of tenosynovitis along the dorsum of the extensor tendons of the second digit.

In a decision dated June 22, 2009, the Office denied that appellant sustained a consequential injury on March 3, 2009, finding that the medical evidence failed to establish that his right hand injury of March 3, 2009 was consequential to the January 29, 2009 work accident. It also denied compensation for a recurrence of disability due to his accepted January 29, 2009 employment injury. The Office found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability as of May 3, 2009 was caused or aggravated by his accepted neck and back conditions.

By letter dated June 29, 2009, appellant's attorney requested an oral hearing, which was held on October 6, 2009.

In a June 9, 2009 report, Dr. Adam McCrea, a chiropractor, stated that appellant reported complaints of constant, sharp, bilateral lower back pain which radiated down the left buttock area into the posterior thigh and calf. It consisted of a "tingling" and "burning" sensation, with weakness and numbness in the anterior thigh on the left. Dr. McCrea reviewed the February 27, 2009 lumbar MRI scan and diagnosed paresthesias, lumbosacral neuritis, low back discopathy without myelopathy, lumbar segmental disorder, sacral dysfunction and myalgia and myositis. He submitted progress reports dated June 15 to 22, 2009.

By letter dated July 21, 2009, the Office informed appellant that chiropractic services were not payable because there was no diagnosis of subluxation from x-rays.

Dr. McRae submitted additional progress reports dated June 24 to August 3, 2009.

In a June 8, 2009 report, Dr. Gary M. Sherman, a specialist in orthopedic surgery, stated that appellant experienced pain and discomfort in his right hand. He advised that the June 8, 2009 MRI scan showed significant synovial thickening at the second metacarpophalangeal joint as well as a small subchondral cyst or erosions in the distal third metacarpal. Dr. Sherman opined that appellant's primary problem was occurring in the collateral ligament off the metacarpal head of the index finger, which could be related to a tear and would explain why he had experienced substantial pain in the area.

In a report dated July 1, 2009, Dr. Kosuri stated that he saw little improvement in appellant's low back pain that radiated into the lower extremities despite having undergone extensive chiropractic treatment. In reports dated July 21 and 27, 2009, he reiterated his findings.

In a July 29, 2009 report, Dr. Sherman stated that appellant believed the reason he injured his right hand on March 3, 2009 was that his back gave out. Appellant fell down steps, jamming his right hand in between the index and middle finger knuckle areas; *i.e.*, the metacarpophalangeal joints. Dr. Sherman stated that he would reexamine appellant in six to eight weeks.

In an August 5, 2009 report, Dr. Kosuri opined that appellant's March 3, 2009 fall at home, when his legs gave out due to his back condition, was related to the January 29, 2009 employment injury. He stated that his opinion was based on a reasonable degree of medical probability. In a September 8, 2009 report, Dr. Kosuri recommended that appellant receive an epidural injection.

By decision dated December 23, 2009, an Office hearing representative affirmed the June 22, 2009 Office decision.

LEGAL PRECEDENT -- ISSUE 1

While the initial employment injury must arise out of and in the course of claimant's federal employment, later nonindustrial injuries may also be compensable.¹ If a member weakened by an employment injury contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury, if the further medical complication flows from the compensable injury, so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that would not be unreasonable in the circumstances.²

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.³ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a cervical and lumbar sprain at work on January 29, 2009. Appellant alleged that his fall at home on March 3, 2009 was due to his accepted lumbar sprain. The Board finds that appellant has not submitted sufficient medical evidence to establish that his fall at home on March 3, 2009 was a consequence of his January 29, 2009 accepted lumbar sprain.

¹ See *S.M.*, 58 ECAB 166 (2006).

² *S.A.*, Docket No. 09-2339 (issued July 22, 2010); see also Larson, *The Law of Workers' Compensation* § 10.01 at p. 10-2 (2004).

³ *J.M.*, 58 ECAB 303 (2007).

Appellant submitted evidence from Drs. Kosuri and Sherman addressing his lumbar condition. On March 5, 2009 Dr. Kosuri reported that appellant fell at home on March 3, 2009 when both of his legs gave out due to severe low back pain. He stated that the fall caused a laceration injury to appellant's right hand which required three to four sutures. Dr. Kosuri did explain, however, how appellant's accepted lumbar sprain caused his legs to give out on March 3, 2009. He did not relate the status of appellant's accepted low back sprain as of March 3, 2009. Rather, Dr. Kosuri noted that an MRI scan of appellant's lumbar spine on February 27, 2009 showed minimal posterior disc bulges at the L3-4 and L4-5 levels, with no significant neural foraminal stenosis or central bony canal stenosis. This MRI scan taken days before the March 3, 2009 fall was essentially a normal examination; but as far as it revealed minimal disc bulging at L3-5, the Board notes that disc bulging is not an accepted condition from the January 29, 2009 injury. There is insufficient rational addressing how the accepted sprain produced a fall at home a month later.

Dr. Kosuri reiterated his conclusion that appellant's March 3, 2009 fall at home was due to the January 29, 2009 employment injury. The Board notes that he merely offered a conclusion, not rationalized medical opinion explaining how appellant's accepted lumbar sprain produced his fall on March 3, 2009.

In a July 29, 2009 report, Dr. Sherman asserted that appellant's March 3, 2009 injury occurred when he fell down steps, jamming his right hand at the metacarpophalangeal joints. He noted appellant's belief that he fell because of his work-related back injury; however, he never addressed why appellant's back sprain would have caused the fall of March 3, 2009.

Although the physicians of record noted appellant's complaints of back pain, they did not adequately address how the accepted sprain of the lumbar spine caused him to fall on March 3, 2009. The medical reports of record do not explain how medically appellant's accepted lumbar sprain would have caused appellant's legs to give out on the stairs, resulting in the fall on March 3, 2008. The opinions of Drs. Kosuri and Sherman on causal relationship are of limited probative value in that they did not provide adequate medical rationale in support of their conclusions.⁴ They did not describe appellant's March 3, 2003 incident in any detail and explain how the incident occurred as a consequence of the January 29, 2009 work injury.

The Board also finds that the reports from Dr. McCrae do not constitute medical evidence. As a chiropractor, he did not diagnose subluxation as shown by x-ray.⁵

The Office advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Appellant did not provide a medical opinion which explains the medical process through which his fall on March 3, 2009 occurred as a consequence of his January 29, 2009 lumbar sprain. Accordingly, appellant did not establish that his March 3, 2009 hand injury was a consequence of the accepted lumbar sprain.

⁴ *William C. Thomas*, 45 ECAB 591 (1994).

⁵ 5 U.S.C. § 8101(2). The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁶ A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury.

ANALYSIS -- ISSUE 2

The Board finds that appellant failed to submit sufficient medical opinion to substantiate a spontaneous recurrence of disability as of March 3, 2009 due to the accepted cervical and lumbar sprains. The Board notes that appellant had not yet returned to work following the January 29, 2009 injury.

Appellant submitted numerous reports from Dr. Kosuri who noted that appellant had severe burning and throbbing pain in the low back area which radiated to both lower extremities, greater on the left side, in addition to numbness in both lower extremities. Dr. Kosuri advised appellant to remain off work. However, he did not provide a medical explanation as to whether appellant's condition on and after March 3, 2009 was a spontaneous change in the accepted lumbar condition, causing further disability. Dr. Kosuri obtained additional diagnostic studies and diagnosed several conditions not accepted as employment related including degenerative lumbar disease and radiculopathy. He submitted progress reports regarding appellant's condition from March to September 2009, noted MRI scan results and provided diagnoses of appellant's conditions but did not specifically explain how appellant sustained a spontaneous worsening of his accepted lumbar or cervical sprain, on March 3, 2009.

None of the other medical reports submitted by appellant provided an explanation in support of his claim that he sustained a spontaneous worsening of his condition, causing further disability as of March 3, 2009.

The Board therefore affirms the December 23, 2009 Office decision affirming the June 22, 2009 Office decision denying compensation based on a recurrence of his work-related disability.

CONCLUSION

The Board finds that appellant has not met his burden to establish that he sustained a consequential injury to his right hand in the performance of duty on March 3, 2009. The Board finds that appellant has not met his burden to establish that he was entitled to compensation for a recurrence of disability as of March 3, 2009 causally related to his accepted neck and low back conditions.

⁶ R.S., 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

ORDER

IT IS HEREBY ORDERED THAT the December 23, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 13, 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