United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 10-1101**
	)	**Issued: March 9, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Kansas City, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 15, 2010 appellant filed a timely appeal from a February 16, 2010 Office of Workers' Compensation Programs' decision that affirmed a May 27, 2009 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that additional cervical disc conditions are causally related to his September 4, 2001 work injury.

FACTUAL HISTORY

On September 4, 2001 appellant, then a 43-year-old mail handler, was injured while pushing and pulling all-purpose containers. The Office accepted cervical strain and a herniated disc at C4-5. It authorized an anterior cervical discectomy at C4-5 which was performed on

June 10, 2003.[1] Appellant missed work intermittently and received wage-loss compensation for various dates through November 18, 2003.

An October 4, 2001 cervical spine magnetic resonance imaging (MRI) scan showed no cervical extruded disc fragment, vertebral body osteophytes, disc bulging prominent at C4-5 with possible minimal posterior cord displacement and mild degenerative foraminal narrowing at left C3-4, C4-5 and C6-7.

Appellant was treated by Dr. Terrence Pratt, a Board-certified orthopedic surgeon, beginning October 28, 2001, for cervical discomfort that began on September 4, 2001 after the work incident. Dr. Pratt diagnosed cervical spondylolysis with sprain/strain due to work activities, history of carpal tunnel syndrome and history of low back pain and right shoulder discomfort. He returned appellant to work with restrictions. In reports dated December 16, 2002 and January 7, 2003, Dr. Pratt noted that appellant had increased symptoms from his work duties. He diagnosed cervical syndrome with disc herniation/protrusion at two levels. A December 19, 2002 cervical spine MRI scan revealed a reversal of the normal lordotic curvature at C4-5 with a disc herniation and a minimal disc protrusion at C6-7 on the left. On October 31, 2002 Dr. Pratt advised that he could not state with medical certainty that work activities resulted in the degenerative condition but opined that appellant's work duties would aggravate underlying cervical degenerative changes. In early 2003, he continued noting appellant's complaints of cervical pain. He diagnosed C4-5 disc herniation with milder involvement at C6-7.

To further develop the claim, appellant was referred to a second opinion physician, Dr. Daniel D. Weed, a Board-certified orthopedic surgeon. In a January 15, 2003 report, Dr. Weed opined that appellant's herniated disc at C4-5 was not resolved. He noted the existence of a disc protrusion at C6-7 and C7-T1.

On June 5, 2003 appellant came under the treatment of Dr. Robert Takacs, a Board-certified orthopedic surgeon, who noted that appellant had right arm, leg and neck problems since the September 4, 2001 work injury. Dr. Takacs diagnosed herniated disc at C4-5 and recommended surgery, an anterior cervical discectomy and fusion at C4-5, which he performed on June 10, 2003. Postoperative reports diagnosed a healing cervical fusion at C4-5 and returned appellant to work light duty on August 2, 2003.[2]

Appellant submitted a May 27, 2004 cervical spine MRI scan which showed focal posterior extrusion at C6-7 to the left, prior operative fusion at C4-5 and broad posterior protrusion at C3-4. A June 29, 2004 EMG revealed evidence of chronic C5-6 and C7 radiculopathy on the left side. A September 25, 2006 cervical spine MRI scan revealed a solid

[1] Appellant filed a claim for carpal tunnel syndrome which was accepted for left carpal tunnel syndrome, file number xxxxxx882. This claim is not before the Board on this appeal.

[2] On April 14, 2004 the Office issued a schedule award for six percent right arm impairment. On January 9, 2006 it denied a claim for an increased schedule award. In a June 1, 2006 decision, the Office affirmed a prior decision denying wage-loss compensation. Appellant appealed these decisions to the Board. In a January 18, 2007 order, the Board remanded the case for the Office to combine File Nos. xxxxxx480 and xxxxxx882. Docket No. 06-1412 (issued January 18, 2007). Matters regarding the schedule award and wage-loss compensation are not presently before the Board.

interbody fusion at C4-5, mild degenerative central canal stenosis at C3-4, C4-5, mild degenerative bilateral foraminal stenosis at C3-4 with no disc protrusion or extrusion.

Appellant submitted reports from Dr. Curtis D. Johnson, a Board-certified orthopedic surgeon, from August 11 to October 17, 2006, who treated him for neck and shoulder pain status post cervical fusion at C4-5. Dr. Johnson diagnosed status post C4-5 cervical fusion, multilevel degenerative disc disease of the cervical spine, myofascial pain and failed neck syndrome and recommended physical therapy and trigger point injections. He continued submitting reports noting appellant's status. In a decision dated January 30, 2008, the Office denied appellant's claim for an additional schedule award.[3]

On November 19, 2007 the Office referred appellant for a second opinion to Dr. Edward Prostic, a Board-certified orthopedic surgeon, with regard to appellant's schedule award claim. In a December 17, 2007 report, Dr. Prostic noted findings of normal alignment of the spine, some limitation in range of motion, no weakness on manual muscle testing, normal sensation with symmetrical reflexes, tenderness of the right shoulder with loss of flexion and abduction. He opined that the anterior cervical discectomy and fusion at C4-5 was successful and noted that the residual symptoms were explained by problems with appellant's shoulders.

By letter dated March 1, 2009, appellant requested that his claim be expanded to include his whole neck. On April 20, 2009 the Office requested that an Office medical adviser address whether appellant's claim should be expanded to include any consequential cervical conditions. In a May 21, 2009 report, the Office medical adviser noted that there was no recent or older medical documentation in the file establishing that appellant sustained a consequential cervical spine condition supported by signs, symptoms and diagnostic studies. He further noted that there was no medical explanation as to how a potential consequential cervical spine condition could be due to the condition or mechanism of injury associated with the cervical spine condition accepted. The medical adviser further indicated that a consequential injury to the "whole neck" was medically impossible.

In a May 27, 2009 decision, the Office denied acceptance of the additional diagnoses of cervical disc herniations at C3-4, C5-6 and C6-7. It found that the additional cervical spine diagnoses were not causally related to the September 4, 2001 work injury.

On May 29, 2009 appellant requested an oral hearing which was held on September 15, 2009. He submitted reports from Dr. Dennison R. Hamilton, Board-certified in occupational medicine, who treated him for neck and right shoulder pain. On May 29, 2009 Dr. Hamilton noted a December 18, 2008 MRI scan showing a fusion at C4-5 and a posterior protrusion at C5-6 and C3-4. He diagnosed neck pain, post C4-5 fusion, radiculitis and protrusion at C5-6 and C3-4. In reports dated June 18 to August 5, 2009, Dr. Hamilton noted that appellant experienced no significant improvement after epidural injections and referred him for neck rehabilitation. He diagnosed neck pain, post C4-5 fusion, radiculitis, intervertebral disc protrusions at C5-6 and C6-7 and stable discogenic pain. In September 2 to 9, 2009 reports, Dr. Hamilton noted appellant's status and stated that his diagnoses remained unchanged. A report from Dr. Norman Bamber, a Board-certified neurosurgeon, dated October 2, 2009,

[3] An August 18, 2008 EMG noted chronic radicular changes at C5-6.

diagnosed cervical spondylosis with neck pain. Dr. Bamber opined that there did not appear to be a correlation with the prior injury and noted appellant's condition was just as likely to be degenerative in nature as from an old injury. Also submitted were physical therapy noted from July 3 to 16, 2008.

In a decision dated December 1, 2009, the hearing representative affirmed the May 27, 2009 Office decision.

On December 10, 2009 appellant requested reconsideration. He submitted medical evidence such as diagnostic reports and reports from Drs. Prostic and Hamilton that were previously of record. A December 18, 2008 MRI scan revealed a fusion at C4-5, disc herniation at C6-7, minimal disc herniation at C5-6 and moderate broad posterior C3-4 disc herniation.

Also submitted was a June 16, 2008 report from Dr. Larry D. Cordell, a Board-certified orthopedic surgeon, who noted a history of injury and anterior discectomy at C4-5. Appellant reported that his neck and shoulder pain did not resolve after his surgery but improved. Dr. Cordell noted that cervical spine x-rays showed a solid arthrodesis at C4-5 with no evidence of disc space narrowing. He diagnosed chronic cervical strain and ankylosis at C4-5 and recommended physical therapy and traction. In a June 16, 2008 prescription note, Dr. Cordell prescribed intermittent cervical traction. Also submitted were physical therapy notes dated June 23 and August 1, 2008.

In a decision dated February 16, 2010, the Office denied modification of the May 27, 2009 decision.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[4]

Causal relationship is a medical issue that must be established by rationalized medical opinion evidence.[5] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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.[6] The weight of medical evidence is determined by its reliability, its

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

[5] *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

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

probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

ANALYSIS

Appellant alleges that he sustained other cervical disc conditions including disc herniations at C3-4, C5-6 and C6-7 as a result of his September 4, 2001 work injury. The Office accepted the claim, as noted, for cervical strain and C4-5 disc herniation.

The Board finds that the medical evidence is insufficient to establish that appellant developed other cervical disc conditions including disc herniations at C3-4, C5-6 and C6-7 causally related to this work injury. The medical records submitted most contemporaneously with the date of the alleged injury, specifically initial reports from Dr. Pratt beginning October 28, 2001, diagnosed cervical spondylolysis with sprain/strain but did not diagnose disc herniations at C3-4, C5-6 and C6-7. The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence.[8] Later reports from Dr. Pratt noted milder involvement at C6-7 but he did not specifically address how any disc herniation at C6-7 was due to the accepted work injury of September 4, 2001.[9] These reports most contemporaneous with the work injury do not support that the September 4, 2001 injury caused or aggravated any additional cervical condition.

Similarly, reports from Dr. Hamilton, who diagnosed disc protrusions at C5-6 and C6-7, did not specifically address whether any disc herniation at C3-4, C5-6, C6-7 was due to the accepted work injury of September 4, 2001. Dr. Cordell did not diagnose disc herniations at C3-4, C5-6 and C6-7 and he did not support that any additional neck condition is causally related to the September 4, 2001 work injury. Additionally, reports from Drs. Takacs, Johnson and Prostic did not diagnose disc herniations at C3-4, C5-6 and C6-7 and their reports do not otherwise support that the September 4, 2001 injury caused or aggravated any additional cervical condition. The record also contains numerous diagnostic test reports but none of these reports explain how any nonaccepted condition was causally related to the 2001 work injury.

The only medical reports addressing the cause of appellant's nonaccepted neck conditions negate a causal relationship between the work injury and such condition. On May 21, 2009 an Office medical adviser noted that there was no medical documentation which established that appellant sustained another cervical spine condition due to the accepted injury. He stated that there was no medical explanation as to how another cervical spine condition could be due to the accepted condition. Likewise, on October 2, 2009 Dr. Bamber diagnosed cervical spondylosis with neck pain but opined that there did not appear to be a correlation with the work injury and noted appellant's condition was just as likely to be degenerative in nature as from an old injury.

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[7] *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[8] *See Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

[9] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

The record also contains physical therapy notes. These documents are of no probative medical value as Board has held that treatment notes signed by a physical therapist are not considered medical evidence as these providers are not a physicians under the Act.[10]

Appellant has not submitted any medical opinion supporting that his other cervical disc conditions including disc herniations at C3-4, C5-6 and C6-7 are employment related. Neither the fact that a claimant's condition became apparent during a period of employment, nor the belief that the condition was caused, precipitated or aggravated by the employment is sufficient to establish causal relationship.[11] Thus, appellant did not meet his burden of proof to establish that the other cervical disc conditions including disc herniations at C3-4, C5-6 and C6-7 is causally related to employment factors.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained other cervical disc conditions including disc herniations at C3-4, C5-6 and C6-7 were causally related to his September 4, 2001 employment incident.

[10] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the Act); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

[11] *D.I.*, 59 ECAB 158 (2007).

ORDER

IT IS HEREBY ORDERED THAT the February 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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