

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

R.S., Appellant

and

**U.S. POSTAL SERVICE, TROY POST OFFICE,
Troy, MI, Employer**

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**Docket No. 10-1704
Issued: May 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 June 15, 2010 appellant, through her attorney, filed a timely appeal of a May 4, 2010 merit decision of the Office of Workers' Compensation Programs denying her consequential injury claim. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant sustained a right shoulder condition as a consequence of her January 9, 2002 employment injuries.

On appeal, appellant's attorney contends that the Office's May 4, 2010 decision is contrary to fact and law.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

The Office accepted that on January 9, 2002 appellant, then a 43-year-old letter carrier, sustained thoracic strain, herniated cervical disc, left shoulder rotator cuff tear, cervical radiculopathy, pain disorder and rotator cuff tear and aggravation of degenerative joint disease of the left shoulder as a result of lifting a heavy parcel at work.

Appellant submitted medical reports dated April 18, 2005 through March 22, 2007, which addressed her right shoulder symptoms. On April 30, 2007 she advised the Office that she wished to expand her claim to include a possible rotator cuff tear of her right shoulder condition and carpal tunnel syndrome. By letter dated May 1, 2007, the Office advised appellant about the medical evidence needed to establish her consequential injury claim.

In a July 28, 2008 medical report, Dr. Thomas S. Piazza, an attending Board-certified internist, advised that appellant had complications from her January 9, 2002 employment injury which included bilateral shoulder rotator cuff tear. In an August 21, 2008 report, he advised that appellant's right shoulder condition was causally related to the accepted injury. Dr. Piazza stated that surgery was required. On October 21, 2008 appellant underwent right shoulder surgery to treat her right shoulder rotator cuff tear.

On November 11, 2008 the Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. B.S. Bohra, a Board-certified surgeon in neurology and orthopedics, for a second opinion medical examination. In a November 28, 2008 report, Dr. Bohra advised that she was status post two cervical spine surgeries, but there was no evidence of any instability, deformity, nerve root compression or myelopathy. Appellant was also status post successful decompression surgery and repair of the rotator cuff of the left shoulder. Dr. Bohra concluded that she had no organic disease process responsible for any cervical symptomatology that were not organic in nature. He further concluded that her left shoulder symptoms had resolved.

The Office requested that Dr. Bohra address whether appellant sustained a right shoulder condition that necessitated the October 21, 2008 surgery due to her January 9, 2002 employment injury. In a January 15, 2009 report, Dr. Bohra advised that there was no evidence of impingement syndrome or rupture of the right shoulder rotator cuff. Appellant only had weakness of the abductors of the right and left shoulders. Dr. Bohra concluded that she did not sustain a right shoulder injury causally related to her January 9, 2002 employment injury.

On January 23, 2009 the Office found a conflict in the medical opinion evidence between Dr. Piazza and Dr. Bohra regarding whether appellant's right shoulder condition was due to her January 9, 2002 employment injury. It referred her, together with a statement of accepted facts and the medical record, to Dr. Robert S. Levine, a Board-certified orthopedic surgeon, for an impartial medical examination.

In an October 11, 2009 report, Dr. Levine reviewed a history of the January 9, 2002 employment injuries and medical treatment and medical records. On physical examination, he reported that appellant was alert and oriented. Appellant was very talkative and did not appear to be in acute distress. Her neck had limited range of motion. Reflexes were symmetrical in the

upper extremities. The circumference of the forearms and arms were symmetrical. Appellant had some tenderness in the right medial and lateral epicondyles. She had some minimal muscular pain in the common extensors with extension of the right wrist against resistance. Appellant's skin and circulation were normal. She had slightly decreased internal rotation of both shoulders, internally rotating her hands to only about T12. Appellant had tenderness over the tip of coracoid processes bilaterally. There was a negative drop sign bilaterally. Appellant had full external rotation of both shoulders. She had a negative impingement sign bilaterally. On x-ray examination, Dr. Levine found that the right shoulder had postoperative changes. There appeared to have been an acromioplasty, Mumford and rotator cuff repair. There was an anchor in the region of the greater tuberosity. Dr. Levine diagnosed status post cervical fusion at C5-C6 two times, status post rotator cuff repair and repair superior labrum from anterior to posterior lesion of the right and left shoulders and probable psychological factors affecting the physical condition with a history of depression.

Dr. Levine concluded that appellant's right shoulder rotator cuff tear and surgery were unrelated to her January 9, 2002 employment injury. He stated that, if she had sustained an acute rotator cuff tear on January 9, 2002, she should have experienced immediate severe pain and an objective loss of function in her right shoulder. Dr. Levine noted that the findings of a July 20, 2007 right shoulder magnetic resonance imaging (MRI) scan were consistent with chronic rotator cuff tendinosis secondary to an impingement and/or wear and tear from normal activities of daily life rather than an acute injury. The findings of a March 3, 2008 left shoulder MRI scan were not consistent with an acute injury, rather they were indicative of a chronic and slowly developing problem. Dr. Levine concluded that the October 2008 right shoulder surgery was necessary due to factors unrelated to appellant's January 9, 2002 employment injury. He stated that her right shoulder problem "devolved insidiously" over time rather than from a single incident.

In a November 10, 2009 decision, the Office denied appellant's claim for a consequential right shoulder condition, finding that Dr. Levine's October 11, 2009 report constituted the weight of the medical opinion evidence as to whether her claimed condition was causally related to her January 9, 2002 employment injuries.

In a November 17, 2009 letter, appellant, through counsel, requested a telephonic oral hearing with an Office hearing representative.

Following a February 16, 2010 telephonic hearing, appellant submitted medical records dated February 17 through April 2, 2010, which addressed her cervical and bilateral upper extremity conditions and medical treatment. In a January 26, 2010 report, Dr. Manaf Seid-Arabi, an attending Board-certified neurologist, listed his findings on neurological examination. He advised that appellant developed shoulder pain, right more than left, due to over-compensating the upper extremities as a result of her January 9, 2002 employment injury.

In a May 4, 2010 decision, an Office hearing representative affirmed the November 10, 2009 decision, finding that Dr. Levine's October 11, 2009 report was entitled to special weight accorded an impartial medical specialist and established that appellant's right shoulder condition was not causally related to her January 9, 2002 employment injuries.

LEGAL PRECEDENT

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.² Regarding the range of compensable consequences of an employment-related injury, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. Thus, once the work-connected character of any condition is established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.³

A claimant bears the burden of proof to establish a claim for a consequential injury.⁴ As part of this burden, he or she 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

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.⁶ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁷

ANALYSIS

Dr. Piazza, appellant's physician, opined that appellant had a torn rotator cuff tear of the right shoulder which necessitated surgery due to the January 9, 2002 employment injury. Dr. Bohra, an Office referral physician, found that the diagnosed right shoulder condition was

² *Albert F. Ranieri*, 55 ECAB 598 (2004).

³ A. Larson, *The Law of Workers' Compensation* § 10.01 (November 2000).

⁴ *J.J.*, Docket No. 09-27 (issued February 10, 2009).

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

⁶ 5 U.S.C. § 8123(a); *see S.T.*, Docket No. 08-1675 (issued May 4, 2009).

⁷ *Gloria J. Godfrey*, 52 ECAB 486 (2001); *B.P.*, Docket No. 08-1457 (issued February 2, 2009).

not causally related to the employment injury. The Office determined that a conflict of medical opinion arose as to whether lifting a heavy parcel at work on January 9, 2002 caused her right shoulder rotator cuff tear. It referred appellant to Dr. Levine, a Board-certified orthopedic surgeon, selected as the impartial medical examiner, pursuant to 5 U.S.C. § 8123(a).

In an October 11, 2009 report, Dr. Levine examined appellant, reviewed the medical evidence of record and concluded that her right shoulder rotator cuff tear and surgery were not causally related to the January 9, 2002 employment injury. On physical examination of the right shoulder, he reported essentially normal findings, noting that she had slightly decreased internal rotation. On x-ray examination of the right shoulder, Dr. Levine found postoperative changes that included a rotator cuff repair. He advised that, had appellant sustained an acute rotator cuff tear on January 9, 2002, she would have experienced immediate severe pain and an objective loss of function in her right shoulder. Dr. Levine further advised that the results of diagnostic testing performed on July 20, 2007 and March 3, 2008 were consistent with chronic rotator cuff tendinosis secondary to an impingement and/or wear and tear from normal activities of daily life rather than an acute injury. He opined that appellant's October 2008 right shoulder surgery was unrelated to the accepted condition. Dr. Levine concluded that her right shoulder condition "devolved insidiously" over time rather than from a single incident.

The Board finds that the special weight of the medical evidence rests with the opinion of Dr. Levine. A reasoned opinion from a referee examiner is entitled to special weight.⁸ The Board finds that Dr. Levine provided a well-rationalized opinion based on a complete background, his review of the statement of accepted facts and the medical record and his examination findings. Dr. Levine's opinion, that appellant did not sustain a right shoulder rotator cuff tear that required surgery due to her January 9, 2002 employment injury, is entitled to special weight and represents the weight of the evidence.⁹

Dr. Seid-Arabi's January 26, 2010 report attributed appellant's shoulder pain, more on the right than left, to the January 9, 2002 employment injury. While the Office accepted her claim for a pain condition related to her left shoulder, Dr. Seid-Arabi did not provide any medical rationale explaining how the accepted employment injury caused or contributed to appellant's right shoulder pain. A mere conclusion without medical rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet the claimant's burden of proof.¹⁰ The medical evidence must include rationale explaining how the physician reached the conclusion.¹¹ The Board finds that Dr. Seid-Arabi's report is of diminished probative value and insufficient to overcome or to create a conflict with the well-rationalized medical opinion of Dr. Levine.¹²

⁸ *Id.*

⁹ *Id.*

¹⁰ *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹¹ *Id.*

¹² *Michael Hughes*, 52 ECAB 387 (2001).

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a right shoulder condition as a consequence of her January 9, 2002 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 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