United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 11-851**
	)	**Issued: October 19, 2011**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMININSTRATION, Ronkonoma, NY, Employer	)	

Appearances:
Thomas S. Harkins, 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 February 17, 2011 appellant filed a timely appeal from the September 10, 2010 merit decision of the Office of Workers' Compensation Programs' (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that all of the conditions diagnosed by his treating physicians are causally related to his accepted July 31, 2004 employment injury.

On appeal, counsel contends that the medical evidence of record is sufficient to establish appellant's claim for the alleged conditions.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case is before the Board for the fourth time. Previously, appellant appealed OWCP's April 5, 2006 decision, which accepted his claim for cervical strain with radiculitis, left shoulder strain and temporary aggravation of herniated discs, but denied his request to include additional conditions. In a February 6, 2007 decision, the Board affirmed OWCP's decision, in part, as to the additional conditions accepted, but set aside the decision as to its refusal to accept additional conditions, due to a conflict in the medical opinion evidence and remanded the case for referral to an impartial medical examiner.[2] In a February 11, 2008 order, the Board remanded the case to OWCP for proper issuance of its June 20, 2007 decision denying expansion of his claim.[3] In a decision dated March 16, 2009, the Board set aside the April 22, 2008 decision denying appellant's request to expand his claim. The Board found that there existed an unresolved conflict in medical opinion due to the insufficiency of the referee physician's report.[4] The facts and the circumstances of those decisions are hereby incorporated by reference.

Pursuant to the Board's instructions, OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Warwick Green, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict in medical opinion between OWCP's medical adviser and appellant's treating physicians. It asked Dr. Green to provide examination findings and a reasoned opinion as to whether appellant had the following claimed conditions and, if so, were they causally related to the accepted July 31, 2004 work injury: cervical disc disease; cervical radiculopathy; cervical muscle spasm; internal derangement of the left shoulder; adhesive capsulitis of the left shoulder; impingement syndrome of the left shoulder; partial thickness tear of the left shoulder; and effusion of the left shoulder.

In a report dated August 6, 2010, Dr. Green stated that he had reviewed the statement of accepted facts and the medical record and provided examination findings. There was no tenderness to palpation of the neck. Neck flexion was full, and extension was 40 degrees. Lateral rotation was 60 degrees in either direction and lateral flexion was 10 degrees in either direction. Examination of the upper extremity revealed altered sensation in the left index finger. The left biceps and brachioradialis reflexes were absent. There was no tenderness to palpation in

[2] Docket No. 06-1328 (issued February 6, 2007).

[3] Docket No. 07-2305 (issued February 11, 2008).

[4] Docket No. 08-2016 (issued March 16, 2009). The Board found that the referee opinion of Dr. Illman was of limited probative value because the report did not address the opinions of OWCP's medical adviser and appellant's treating physicians and did not provide adequate rationale for his opinions. Although Dr. Illman listed examination findings, he did not explain how they supported his opinions. He stated that the multiple herniated discs demonstrated by MRI scan were not medically significant and did not arise from the accepted injury and that degenerative changes at the acromioclavicular joint preexisted the accepted injury. However, Dr. Illman offered no basis for these opinions and did not explain why the herniated discs and degenerative changes could not have been caused or aggravated by the accepted incident, particularly in light of the fact that OWCP accepted appellant's claim for aggravation of herniated discs. He did not discuss possible causes of appellant's impingement syndrome or explain why it was not causally related to the accepted shoulder strain condition. Dr. Illman stated that tendonosis is usually found in an inflammation of the supraspinatus tendon, but he did not explain whether or not this condition could have resulted from the accepted lifting incident. The Board noted that he never addressed the mechanics of the accepted July 31, 2004 incident in relation to the conditions diagnosed by appellant's treating physicians.

the left shoulder. Appellant lacked 30 degrees of flexion and abduction. He experienced pain on empty can testing and impingement testing. Push-pull testing and Yergason's test were negative.

Dr. Green diagnosed C4-7 disc herniations and left shoulder impingement syndrome. He opined that, on the basis of the current findings, in respect to the neck and right shoulder, appellant had disabling residuals of the accepted conditions, but did not require treatment for either the neck or left shoulder. Dr. Green stated that the radiculitis that caused numbness in the left index finger and loss of the reflexes of the left upper extremity, along with the left shoulder impingement syndrome, were causally related to the incident of July 31, 2004, but that appellant's intermittent lower back pain was not related to the accepted injury. He opined that appellant was not capable of returning to his date-of-injury job, but was able to perform sedentary work.

In a "[c]larification [r]eport" dated August 30, 2010, Dr. Green noted that appellant's claim had been accepted for cervical strain with radiculitis, left shoulder strain and temporary aggravation of herniated discs. He reiterated his previous diagnoses, which included C4-7 disc herniations and left shoulder impingement syndrome and stated that appellant had left arm radiculopathy as a result of the cervical disc disease. Dr. Green concluded that cervical strain with radiculitis and left shoulder strain conditions were causally related to the July 31, 2004 injury. Noting that cervical muscle spasm and effusion of the left shoulder were signs, rather than diagnoses, he recommended that they be deleted. Dr. Green also indicated that internal derangement of the left shoulder is simply a catch-all phrase indicating that the diagnosis is not really known. The MRI scan did not indicate any evidence of partial thickness tearing of the left shoulder rotator cuff and there was no evidence of adhesive capsulitis. In summary, Dr. Green opined that the conditions of cervical disc disease, cervical radiculopathy and impingement syndrome of the left shoulder were causally related to the July 31, 2004 injury.

In a decision dated September 10, 2010, OWCP expanded appellant's claim to include impingement syndrome of the left shoulder and cervical disc disease, but denied his request to expand the claim to include internal derangement of the left shoulder, cervical muscle spasm, adhesive capsulitis, left shoulder effusion and partial thickness tear of the left shoulder. The claims examiner stated that the decision was based upon the medical examination and reports from Dr. Green.

LEGAL PRECEDENT

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[5] Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the

[5] *Katherine Friday*, 47 ECAB 591 (1996).

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 established incident or factor of employment.[6]

Section 8123 of FECA provides that, 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, who shall make an examination.[7] When 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.[8]

When OWCP obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, it must secure a supplemental report from the specialist to correct the defect in his original report.[9] However, when the impartial specialist is unable to clarify or elaborate on his original report, or if his supplemental report is also vague, speculative or lacking in rationale, OWCP must submit the case record and a detailed statement of accepted facts to a second impartial specialist for the purpose of obtaining his rationalized medical opinion on the issue.[10]

ANALYSIS

In accordance with the Board's directive, OWCP referred appellant to an impartial medical examiner in order to resolve the conflict in medical opinion as to whether his current conditions were causally related to the accepted July 31, 2004 employment incident. The Board finds, however, that Dr. Green's reports are insufficiently rationalized to resolve the conflict in medical opinion. Therefore, this case is not in posture for a decision and must be remanded to OWCP for further development of the medical evidence.

In its March 16, 2009 decision, the Board set aside OWCP's April 22, 2008 decision denying appellant's request to expand his claim, finding that the report of the impartial medical examiner was insufficient to resolve the conflict in medical opinion. The Board noted that the referee physician failed to address the opinions of OWCP's medical adviser and appellant's treating physicians or to provide adequate rationale for his opinions. Dr. Illman never addressed

[6] *John W Montoya*, 54 ECAB 306 (2003).

[7] 5 U.S.C. § 8123.

[8] *James F. Weikel*, 54 ECAB 660 (2003); *Beverly Grimes*, 54 ECAB 543 (2003): *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Daniel F. O'Donnell. Jr*., 54 ECAB 456 (2003); *Phyllis Weinstein (Elliot H. Weinstein)*, 54 ECAB 360 (2003); *Bernadine P. Tailor*, 54 ECAB 336 (2003); *Karen L. Yeager*, 54 ECAB 317 (2003); *Barry Neutuch*, 54 ECAB 313 (2003); *David W Picken*, 54 ECAB 272 (2002).

[9] *Raymond A. Fondots*, 53 ECAB 637, 641 (2002); *Nancy Lackner (Jack D. Lackner)*, 40 SCAB 232 (1988); *Ramon K. Ferrin, Jr.* 39 ECAB 736 (1988).

[10] *Nancy Keenan*, 56 ECAB 687 (2005); *Roger W Griffith*, 51 ECAB 491 (2000); *Talmadge Miller*, 47 ECAB 673 (1996).

the mechanics of the accepted July 31, 2004 incident in relation to the conditions diagnosed by appellant's treating physicians. Although he listed examination findings, he did not explain how they supported his opinions. In light of these deficiencies, the Board remanded the case to OWCP for further development.

On remand, OWCP asked Dr. Green to provide a rationalized opinion as to whether appellant had cervical disc disease, cervical radiculopathy, cervical muscle spasm, internal derangement of the left shoulder, adhesive capsulitis of the left shoulder, impingement syndrome of the left shoulder, partial thickness tear of the left shoulder or effusion of the left shoulder as a result of the accepted July 31, 2004 work injury. In an August 6, 2010 report, Dr. Green provided minimal examination findings and diagnosed C4-7 disc herniations and left shoulder impingement syndrome. He opined, without explanation, that the radiculitis that caused numbness in the left index finger and loss of the reflexes of the left upper extremity, along with the left shoulder impingement syndrome, were causally related to the incident of July 31, 2004, but that appellant's intermittent lower back pain was not related to the accepted injury. In a "clarification report" dated August 30, 2010, Dr. Green opined that the conditions of cervical disc disease, cervical radiculopathy and impingement syndrome of the left shoulder were causally related to the July 31, 2004 injury. He stated that cervical muscle spasm and effusion of the left shoulder were signs, rather than diagnoses, and indicated that internal derangement of the left shoulder is a catch-all phrase indicating that the diagnosis is not really known. Dr. Green did not explain, however, as requested, whether appellant had cervical muscle spasms and left shoulder effusion resulting from the accepted injury. He noted the lack of evidence of partial thickness tearing of the left shoulder rotator cuff or of adhesive capsulitis. Dr. Green failed to address Dr. Illman's referee report, which contained a diagnosis of impingement syndrome of the left shoulder, which he opined had over time developed into adhesive capsulitis.

Dr. Green's reports did not cure the deficiencies identified in Dr. Illman's referee report. He failed to address the opinions of the OWCP medical adviser and appellant's treating physicians. Dr. Green did not discuss the mechanics of the accepted July 31, 2004 incident in relation to the conditions diagnosed by appellant's treating physicians. Although he provided brief examination findings, he did not explain how they supported his opinions. As Dr. Green's report is not sufficiently rationalized, it is of diminished probative value.

OWCP referred appellant to Dr. Green for the specific purpose of resolving the conflict in medical evidence. For reasons stated above, the Board finds that Dr. Green's reports are insufficient to resolve the conflict. Therefore, the case will be remanded to OWCP for a supplemental opinion from Dr. Green, which provides clarification and elaboration. If Dr. Green is unwilling or unable to clarify and elaborate on his opinion, the case should be referred to another appropriate impartial medical specialist. After such further development as OWCP deems necessary, an appropriate decision should be issued.

CONCLUSION

The Board finds that this case is not in posture for a decision, as there exists an unresolved conflict in the medical opinion evidence as to whether appellant's current conditions of cervical muscle spasm, internal derangement of the left shoulder, partial thickness tear of the

left shoulder and effusion of the left shoulder are causally related to the accepted July 31, 2004 injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 10, 2010 is affirmed in part as to the acceptance of impingement syndrome of the left shoulder and cervical disc disease; it is, however, set aside in part and remanded for action consistent with the terms of this decision.

Issued: October 19, 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