

FACTUAL HISTORY

On January 26, 2004 appellant, then a 50-year-old painter, injured his left arm and ribcage when he tripped over barrier tape while performing his work duties. OWCP accepted the claim for left shoulder strain, left rib cage contusion and left rotator cuff tear. Appellant underwent arthroscopy surgery of the left shoulder on June 3, 2004. He stopped work from January 27 to 30, 2004. Appellant was removed from employment effective March 30, 2004 for actions unrelated to his work injury.² He received compensation for disability attributable to his left shoulder surgery.

Appellant was treated by Dr. Kenneth R. Koskella, a Board-certified orthopedic surgeon, from April 27 to August 23, 2004. A magnetic resonance imaging (MRI) scan of the left shoulder revealed a full thickness tear of the supraspinatus tendon distally with involvement of the distal infraspinatus tendon. Dr. Koskella diagnosed rotator cuff tear of the left shoulder due to the January 26, 2004 work injury. He also noted that appellant had a history of a right rotator cuff tear that was surgically treated as well as chronic back pain with a history of a herniated disc. In an August 23, 2004 report, Dr. Koskella noted that the left large rotator cuff tear was not completely repairable and full recovery was not expected.

In a September 20, 2005 letter, appellant noted that he found work in nonfederal employment as a truck driver.

On February 9, 2006 appellant filed a claim for a schedule award. On June 22, 2006 OWCP granted him a schedule award for 15 percent permanent left arm impairment. The award was from November 1, 2005 to September 24, 2006.

Appellant began treatment with Dr. Marc Suffis, a Board-certified orthopedic surgeon. In an October 26, 2009 report, Dr. Suffis noted appellant's history of a right rotator cuff tear and a work-related left rotator cuff tear and repair in 2004. Appellant reported doing well until September 11, 2009 when he was helping his brother tie down a car using a bungee cord. The cord snapped, causing him to fall and injure his left shoulder. Appellant reported that the incident occurred while he was not working. He complained of markedly increased left shoulder pain and weakness. Dr. Suffis diagnosed acute tear of the supra and infraspinatus rotator cuff with labral tear. He reviewed the medical records and advised that in 2004 appellant had a massive left rotator cuff tear which left him with permanent weak shoulder integrity. Dr. Suffis opined that appellant's fall on September 11, 2009 resulted in a massive left rotator cuff tear as a result of being initially weakened from his previous massive tear and noted both tears occurred at the distal tendon.

In an October 26, 2009 attending physician's report, Dr. Suffis noted the history of a massive left rotator cuff tear in 2004 which was surgically repaired and a subsequent rotator cuff tear at the same location on September 11, 2009. He diagnosed left rotator cuff tear and noted

² Appellant was removed from his position for possession of a controlled substance while on federal property and on-duty illegal drug use. He received compensation due to his left shoulder surgery and eventually began working within restrictions for a private employer.

with a checkmark “yes” that the condition was work related. In a November 3, 2009 attending physician’s report, Dr. Suffis noted that appellant injured his left shoulder in January 2004 which was surgically repaired and noted weakness in the rotator cuff. He checked a box “yes” that appellant’s condition was caused by his employment noting that appellant had a severe tear in 2004 at the same location and had a fall in September 11, 2009 that resulted in a repeat tear. In a November 3, 2009 report, Dr. Suffis treated appellant for a left shoulder injury and noted that the rotator cuff tears were in a similar location. He opined that the left shoulder was permanently weakened from the initial fall which allowed a new tear to occur.

On November 10, 2009 appellant filed a Form CA-2a, notice of recurrence of disability, commencing September 11, 2009. On September 11, 2009 he was helping his brother put a tarp on his utility trailer when he pulled a bungee cord which snapped causing his left arm to be thrown backwards and he fell on his right side. Appellant noted that a magnetic resonance imaging (MRI) scan of the left shoulder revealed that he sustained the same injury as the original injury in 2004. At the time of the recurrence, he was working light duty.

In a November 2, 2009 report, Dr. Koskella noted that appellant underwent left rotator cuff surgery in April 2004 and recovered with little pain but decreased motion. He obtained a history that on September 11, 2009 appellant was pulling a bungee cord and felt a sudden pain and weakness in his left shoulder. Dr. Koskella noted that an MRI scan showed a complete tear of the supraspinatus and infraspinatus with retraction and also a possible labral tear. Appellant reported that he worked for Western Express and that this injury was not work related. Dr. Koskella diagnosed acute and chronic rotator cuff tear of the left shoulder which was previously treated with fair recovery.

On December 11, 2009 OWCP requested that appellant submit additional evidence in support of his recurrence claim within 30 days.

On January 7, 2010 the employing establishment noted that appellant last performed official duties on March 30, 2004 and was removed from his employment for cause. It contended that his alleged recurrence did not arise in the performance of duty.

In a February 12, 2010 decision, OWCP denied appellant’s claim for a recurrence of disability. It found that the evidence failed to establish a spontaneous change in his shoulder condition that resulted from a previous injury; rather, the evidence supported that on September 11, 2009 he sustained an intervening injury to his left shoulder when he was helping his brother put a tarp on a trailer.

On February 22, 2010 appellant requested an oral hearing. In a February 23, 2010 report, Dr. Koskella noted treating appellant for bilateral shoulder injuries. He diagnosed acute, chronic left rotator cuff tear and a failed left rotator cuff repair. Dr. Koskella recommended surgery but advised that the injury may be surgically untreatable.

In a decision dated May 6, 2010, the hearing representative set aside the February 12, 2010 decision and remanded the case for further medical development.

On July 1, 2010 appellant underwent a second opinion evaluation with Dr. Lance M. Brigham, a Board-certified orthopedic surgeon, who reviewed the history of injury and medical treatment. Dr. Brigham noted that appellant worked as a truck driver since 2005. Appellant reported that after the January 26, 2004 work injury he underwent physical therapy and was retrained as a truck driver. He had no treatment for his left shoulder during this time. Appellant reported a subsequent injury on September 11, 2009 when he was tightening down a load with a bungee cord that broke and he experienced acute left shoulder pain. He underwent surgery on March 4, 2010 and was undergoing physical therapy. Dr. Brigham noted findings on examination and listed a history of chronic rotator cuff tear with aggravation by the injury of January 26, 2004 with a subsequent surgery; history of a second injury to the left shoulder on September 11, 2009 with aggravation of pain, felt to be a separate condition and unrelated to the injury of January 26, 2004 and history of chronic rotator cuff tear of the right shoulder unrelated to the claim. He found that the September 11, 2009 injury was unrelated to the prior injury of January 26, 2004. Dr. Brigham based this conclusion on appellant's statement that he was doing well with his left shoulder until the accident of September 11, 2009 and had not sought medical help for over four years. He advised that the open rotator cuff repair performed on the left shoulder was due solely to the September 11, 2009 injury and unrelated to the January 26, 2004 injury. Dr. Brigham noted work restrictions due to the January 26, 2004 injury were unchanged. He advised that appellant was restricted from all work activities secondary to the September 11, 2009 injury, unrelated to the January 26, 2004 injury.

In a decision dated July 8, 2010, OWCP denied appellant's claim for a recurrence of disability on September 11, 2009.

On July 20, 2010 appellant requested an oral hearing which was held on October 19, 2010. He testified that on September 11, 2009 he was helping his brother secure a tarp over a load on a trailer with a bungee cord. While using the bungee cord to secure the tarp, it snapped and appellant's left arm was thrown backward. As a truck driver he used bungee cords to secure his loads. Appellant submitted a July 18, 2010 duty status report from Dr. Koskella who diagnosed rotator cuff tear of the left shoulder and advised that appellant could not work and was undergoing back surgery. In a November 30, 2010 report, Dr. Suffis opined that as a result of the initial injury of January 26, 2004 appellant's rotator cuff was weakened and that but for the initial injury appellant would not have had such a massive retearing from the fall in 2009. He disagreed with Dr. Brigham and believed there was an association between the two rotator cuff tears.

In a decision dated January 6, 2011, the hearing representative affirmed the July 8, 2010 decision.

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.³

³ *Mary Poller*, 55 ECAB 483 (2004).

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.⁴

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment, which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁵

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which he claims compensation is causally related to the accepted employment injury.⁶ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.⁷ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.⁸ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁹

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.¹⁰ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the

⁴ A. Larson, *The Law of Workers' Compensation* § 10.01 (November 2000).

⁵ 20 C.F.R. § 10.5(x).

⁶ *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

⁷ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁸ *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

⁹ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

¹⁰ *See Ricky S. Storms*, *supra* note 8; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

physician's conclusion of a causal relationship.¹¹ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.¹²

ANALYSIS

OWCP accepted that appellant sustained a left shoulder strain, left rib cage contusion and a left rotator cuff tear as a result of the January 26, 2004 employment injury. Arthroscopic surgery was authorized and performed on June 3, 2004. Appellant stopped work on March 30, 2004 when he was removed from employment for actions unrelated to his work injury. He returned to nonfederal employment as a truck driver on July 11, 2005. Appellant subsequently claimed a recurrence of disability commencing September 11, 2009. The Board finds that he failed to submit sufficient medical evidence to establish that his disability commencing September 11, 2009 is attributable to his accepted condition.

OWCP properly found that appellant had an intervening incident on September 11, 2009 which triggered his disabling symptoms. Appellant testified that on September 11, 2009 he was helping his brother secure a tarp over a load on his trailer. He stated that while he was using a bungee cord to secure a tarp the bungee cord snapped and threw his left arm back. The Board finds that this is an intervening incident unrelated to appellant's accepted injury of January 26, 2004. Appellant's testimony regarding assisting his brother in securing a tarp on the load by using a bungee cord and the bungee cord subsequently snapping causing his left arm to be thrown back is sufficient to establish an intervening cause rather than a spontaneous change of his accepted left shoulder injury. Furthermore, his testimony is inconsistent with the attorney's argument on appeal that appellant had not sustained a new injury or an intervening accident. Accordingly, the Board finds that appellant's claim does not meet the definition of a recurrence of disability as appellant's circumstances do not involve a spontaneous change in his accepted condition but rather show an intervening injury.¹³

The Board also finds that the medical evidence does not establish appellant's claim for a recurrence of disability. OWCP referred appellant to Dr. Brigham for a second opinion. On July 1, 2010 Dr. Brigham noted that appellant sustained a January 26, 2004 work injury and had surgery later that year but sought no subsequent treatment for his left shoulder until 2009. Appellant reported an injury on September 11, 2009 when he was tightening a load with a bungee cord and the bungee cord broke and he experienced acute left shoulder pain. Dr. Brigham diagnosed history of chronic rotator cuff tear with aggravation by the injury of January 26, 2004 with a subsequent surgery, history of second injury to the left shoulder on September 11, 2009 with aggravation of pain, felt to be a separate condition and unrelated to the injury of January 26, 2004 and history of chronic rotator cuff tear right shoulder unrelated to this

¹¹ For the importance of bridging information in establishing a claim for a recurrence of disability, see *Richard McBride*, 37 ECAB 748 at 753 (1986).

¹² See *Ricky S. Storms*, *supra* note 8; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹³ See *Bryant F. Blackmon*, 56 ECAB 752, 764 (2005); see *supra* note 5.

claim. He opined that the injury of September 11, 2009 was unrelated to the injury of January 26, 2004. Dr. Brigham based this conclusion on appellant's statement that he was doing well with his left shoulder until the accident of September 11, 2009 and had not sought medical care for over four years. He noted that an open rotator cuff repair was performed in March 2010 and the surgery was due solely to the injury of September 11, 2009 and unrelated to the January 26, 2004 injury.

In an October 26, 2009 report, Dr. Suffis noted the 2004 work-related left rotator cuff tear and repair. Appellant reported doing well until the September 11, 2009 bungee cord incident. Dr. Suffis diagnosed acute tear of the supra and infraspinatus rotator cuff with labral tear and opined that appellant's acute fall on September 11, 2009 resulted in a massive left rotator cuff tear as a result of being initially weakened from his previous massive tear. He noted both tears occurred at the distal tendon. On November 3, 2009 Dr. Suffis opined that the left shoulder was permanently weakened from the initial fall which allowed a new tear to occur. Likewise, he opined on November 30, 2010 that the rotator cuff was weakened from the January 26, 2004 initial injury and that but for the initial injury appellant would not have had such a massive re-tearing from the fall in 2009. In attending physician's reports dated October 26 and November 3, 2009, Dr. Suffis noted the 2004 and 2009 left rotator cuff tears and checked boxes "yes" that the condition was caused by employment. While he attributed appellant's current left shoulder condition to the January 26, 2004 work injury, he did not sufficiently explain how appellant's current disability and left shoulder condition beginning September 11, 2009 was causally related to the January 26, 2004 employment injury and not to the snapping of the bungee cord while assisting his brother secure a tarp onto a trailer.¹⁴ Dr. Suffis' blanket statement that appellant's left shoulder was permanently weakened from the initial fall in 2004, which allowed a new tear to occur in September 2009 after the bungee cord incident, suggests that the condition was caused by a separate incident and gives no indication that appellant had bridging symptoms¹⁵ before the September 11, 2009 incident. His reports are insufficient to establish appellant's claim for a recurrence of disability.

In a November 2, 2009 report, Dr. Koskella noted that appellant recovered from his 2004 surgery with little pain. He advised that appellant related the September 11, 2009 bungee cord incident where he felt sudden left shoulder pain and weakness. Dr. Koskella diagnosed acute and chronic rotator cuff tear of the left shoulder which was previously treated with fair recovery. He did not explain how appellant's current left shoulder condition and disability beginning September 11, 2009 was causally related to the January 26, 2004 employment injury. Likewise, other reports from Dr. Koskella did not explain appellant's condition on and after September 11, 2009 was due to the 2004 injury and surgery. Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁶ Dr. Koskella's reports are of limited probative value. Appellant did not submit sufficient medical evidence that establishes a spontaneous change in his medical

¹⁴ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹⁵ See *Ricky S. Storms*, *supra* note 8.

¹⁶ *A.D.*, 58 ECAB 149 (2006); *Michael E. Smith*, 50 ECAB 313 (1999).

condition resulting from the accepted injury and therefore he did not meet his burden of proof to establish that he sustained a recurrence of disability.

The Board finds that Dr. Brigham's report was based on a complete and accurate factual and medical background, a review of the case record and a comprehensive physical examination of appellant. Dr. Brigham opined that the September 11, 2009 injury and resulting surgery were unrelated to the accepted work injury of January 26, 2004. His report constitutes the weight of the evidence and establishes that the claimed recurrence is not related to the accepted work injury.

On appeal, appellant relies upon *J.M.*,¹⁷ to support his claim for a recurrence of disability. In that case the Board found that the employee's bending at the knees to grease his tractor was not an intervening event that broke the chain of causation to the original back injury. The Board explained that every natural consequence flowing from an accepted injury is deemed to arise out of employment unless it is the result of an independent intervening cause. Appellant asserts that this case is similar to *J.M.* noting that the September 11, 2009 incident in which he assisted his brother to secure a tarp with a bungee cord was not an unreasonable activity under the circumstances. The Board finds that the facts of appellant's claim are distinguishable from *J.M.*, where the employee was merely bending at the knees when he reinjured his back. Appellant described a specific identifiable event when he used a bungee cord to secure a tarp on a trailer and the bungee cord snapped causing him to fall and injury his left shoulder. The facts of this case more closely resembles that of *John R. Knox*,¹⁸ where the employee was injured while playing basketball, which broke the chain of causation concerning his accepted left knee injury. The Board found that playing basketball constituted an independent, intervening cause resulting from his own intentional conduct. Similarly, in *Robert J. Wescoe*,¹⁹ appellant played volleyball while on light duty for a shoulder injury after being advised by his physician that he was prone to shoulder dislocations. The Board held that playing volleyball was an independent, intervening cause attributable to his own intentional conduct. In appellant's case, there was an identifiable independent event which triggered an immediate injury to the same part of the body in 2009, the left shoulder, five years after the original injury in 2004. This constitutes an intervening event that broke the natural progression of his accepted left shoulder injury.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a recurrence of disability on September 11, 2009 causally related to his January 26, 2004 employment injury.

¹⁷ Docket No. 08-1679 (issued June 11, 2009).

¹⁸ *John R. Knox*, 42 ECAB 193 (1990).

¹⁹ See 54 ECAB 162 (2002).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated January 6, 2011 is affirmed.

Issued: January 27, 2012
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