

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

R.J., Appellant

and

**FEDERAL JUDICIARY, U.S. PROBATION
OFFICE, Cheyenne, WY, Employer**

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**Docket No. 12-229
Issued: July 10, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 18, 2011 appellant filed a timely appeal from Office of Workers' Compensation Programs' (OWCP) decisions dated June 1 and November 3, 2011. Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 sustained a consequential spinal stenosis condition in the performance of duty.

FACTUAL HISTORY

This is the second appeal before the Board. Appellant, then a 52-year-old deputy clerk, filed a Form CA-2 claim for benefits under case file number xxxxxx800, alleging that he sustained a multilevel degenerative joint disease at L4-5 and L5-S1 disc protrusion. He stated on

¹ 5 U.S.C. § 8101 *et seq.*

the form that he first became aware that he had this condition on August 8, 1988. In a September 27, 2007 report, Dr. Gunnar B. Andersson, a Board-certified orthopedic surgeon, stated that he began treating appellant for low back pain approximately 20 years previously; at that time he diagnosed herniated disc. He examined appellant again on September 20, 2007 at which time he was experiencing increasing symptoms. Dr. Andersson advised that a recently administered magnetic resonance imaging (MRI) scan confirmed the previous diagnosis of stenosis at L4-5 and L5-S1 with facet osteoarthritis at both levels. By decision dated October 17, 2007, OWCP denied the claim. It consolidated the instant claim, case file number xxxxxx800, with two other claims filed by appellant: a claim for traumatic injury on May 21, 1986 under case file number xxxxxx834; and a claim for traumatic injury on July 31, 1987 under case file number xxxxxx690. OWCP also indicated that appellant had also filed an occupational disease claim in 1988 under case file number xxxxxx138, which OWCP accepted for displacement of lumbar intervertebral disc and brachial neuritis or radiculitis. Appellant requested an oral hearing and submitted an October 31, 2007 report from Dr. Andersson, who indicated that appellant's diagnosed spinal stenosis and facet osteoarthritis at L4-5 and L5-S1 conditions developed as a consequence of his prior work-related herniated lumbar disc. Regarding appellant's stenosis, Dr. Andersson explained that appellant now had severe degenerative changes in the area where the herniated disc existed causing stenosis and facet osteoarthritis. He concluded that it is common that an accelerated degenerative process occurs following the disc herniation.

By decision dated May 14, 2008, an OWCP hearing representative set aside the October 17, 2007 decision. He found that while Dr. Andersson's report was not sufficient to establish that these conditions were causally related to his prior, accepted work injuries, it did raise an uncontroverted inference between the claimed injury or disability and these injuries. The hearing representative therefore remanded for OWCP to further develop the evidence. He instructed OWCP to assemble appellant's prior case record, prepare a new statement of accepted facts and refer appellant and all his case records to a second opinion examiner for a reasoned medical opinion regarding whether he had a current back condition causally related to or a consequence of his prior work-related injuries.

In an August 7, 2008 report, Dr. Andersson explained that the majority of disc herniations heal without surgical intervention, but they could lead to accelerated degeneration of the disc itself. He further explained: "Thus, it is typical to see an accelerated degenerative process after a disc herniation where the disc loses height over a fairly short period of time. This leads to a redistribution of the forces acting over the facet joints, which means that the surfaces of the facet joints no longer are congruent. As a result, osteoarthritis of the facet joints occurs." Dr. Andersson also noted that it was of course possible to develop disc degeneration and facet osteoarthritis as a result of aging and that these conditions, including stenosis occurs frequently in patients who have never had a herniated disc.

By decisions dated July 28, 2008, March 10, 2009 and March 5, 2010, OWCP denied appellant's claim for a consequential lower back condition causally related to his prior accepted low back injuries.

By order dated February 18, 2011, the Board set aside OWCP's March 5, 2010 decision. It found that OWCP did not include appellant's prior accepted conditions in the June 4, 2008

statement of accepted facts and did not include the contemporaneous medical records pertaining to those injuries with the instant case record, in accordance with the hearing representative's instructions. The Board therefore remanded for reconstruction and reconsolidation of the case record to include the case files pertaining to claim numbers xxxxxx800, xxxxxx834 and xxxxxx690 and followed by a *de novo* decision to protect appellant's appeal rights.² The complete facts of this case are set forth in the Board's February 8, 2011 decision and are herein incorporated by reference.

In an amended statement of accepted facts dated March 10, 2011, OWCP indicated that it had accepted claims for low back strain resulting from a traumatic injury sustained on May 21, 1986; lumbosacral strain for a traumatic injury sustained on July 31, 1987; and herniated lumbar disc for a traumatic injury sustained on March 1, 1989.

On remand, OWCP referred appellant to Dr. Allan M. Brecher, Board-certified in orthopedic surgery, for a second opinion examination. In a May 10, 2011 report, Dr. Brecher found no causal relationship between appellant's current back condition and his prior accepted injuries. He diagnosed appellant's spinal stenosis but found that this did not result as a consequence of the previous, accepted low back strains he sustained during the late 1980's. Dr. Brecher advised that appellant did not develop spinal stenosis until much later, which suggested that his condition resulted as a consequence of age, natural spinal degeneration and obesity.

By decision dated June 1, 2011, OWCP denied the claim, finding that appellant failed to establish that his current spinal stenosis condition was a consequence of his accepted lumbosacral strain injuries. It found that Dr. Brecher's referral opinion represented the weight of the medical evidence.

On August 9, 2011 appellant requested reconsideration. He did not submit any new medical evidence.³

By decision dated November 3, 2011, OWCP denied modification of the June 1, 2011 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.⁴ 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

² Docket No. 10-1226 (issued February 8, 2011).

³ The Board notes that appellant did submit Dr. Andersson's August 7, 2008 report, which, as noted, was considered by OWCP in a prior decision.

⁴ *Mary Poller*, 55 ECAB 483 (2004).

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 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.⁵

A claimant bears the burden of proof to establish a claim for a consequential injury.⁶ As part of this burden, he or she must present rationalized medical opinion evidence, based in 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.⁷

ANALYSIS

OWCP accepted the conditions of low back strain, lumbosacral strain and herniated lumbar disc for traumatic injuries appellant sustained in 1986, 1987 and 1988. The issue is whether appellant sustained his current diagnosed condition, spinal stenosis, as a consequence of these previously accepted injuries. The Board finds that he has not submitted sufficient medical evidence to establish his claim.

In support of his claim, appellant submitted reports from Dr. Andersson. In his October 31, 2007 report, Dr. Andersson related that herniated discs could become weaker and lead to an accelerated degenerative process, which would cause stenosis. However, he further explained in his August 7, 2008 report, that, while it was typical to see an accelerated degenerative process after a disc herniation, due to loss of disc height and subsequent loss of congruence, it was also possible to develop disc degeneration, including stenosis and facet osteoarthritis as a result of aging. The Board finds that Dr. Andersson's reports are speculative in nature. Dr. Andersson never explained any medical history or physical findings to support a conclusion that appellant's degenerative process and stenosis were causally related to his accepted herniated disc. Instead, he addressed the issue of disc herniation and the degenerative process in general terms, nonspecific to appellant's medical history. Lacking necessary medical rationale, Dr. Andersson's reports are of limited probative value. They are insufficient to establish that appellant's spinal stenosis, which he diagnosed in 2007 were related to his employment injuries which occurred some 20 years prior.

OWCP referred appellant to Dr. Brecher, who diagnosed spinal stenosis but found that this condition was not causally related to his previous, accepted low back injuries. Dr. Brecher noted that appellant sustained these traumatic injuries 20 years prior to the time when his treating

⁵ A. Larson, *The Law of Workers' Compensation* § 10.01.

⁶ *William C. Thomas*, 45 ECAB 591 (1994).

⁷ *Charles W. Downey*, 54 ECAB 421 (2003).

physician diagnosed spinal stenosis. Based on this history, he opined that appellant's spinal stenosis resulted from age, natural spinal degeneration and obesity and was not result as a consequence of his accepted lumbosacral strain and herniated disc injuries. Dr. Brecher's opinion that appellant's claimed spinal stenosis condition did not arise as a consequence of his 1986, 1987 and 1988 employment injuries is thorough, probative, well rationalized and based on his examination of appellant and his medical history. OWCP properly found that Dr. Brecher's referral opinion represented the weight of the medical evidence.

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.⁸ Causal relationship must be established by rationalized medical opinion evidence and he failed to submit such evidence.

OWCP 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 describes or explains the medical process through which he would have developed a spinal stenosis condition as a consequence of his 1986, 1987 and 1988 employment injuries. OWCP properly denied his claim for compensation.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a consequential spinal stenosis condition in the performance of duty.

⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 3 and June 1, 2011 decisions of the Office of Workers' Compensation Programs' are affirmed.

Issued: July 10, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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