

On June 15, 2004 appellant, then a 47-year-old city carrier, filed an occupational disease claim for a right knee condition that began around March 1, 2004. He subsequently got promoted to a supervisor position. OWCP accepted the claim for a work-related right knee strain, a tear to the right knee medial meniscus and a consequential lumbar strain. Appellant underwent authorized arthroscopic right knee surgery on April 6, 2006 and an authorized total right knee replacement on June 26, 2007. Following each surgery, he returned to work as a supervisor.

In an October 7, 2008 decision, OWCP expanded the claim to include temporary aggravation of degenerative disease of the lumbar spine, cervical spine, left shoulder and left lower extremity but determined based on a second opinion orthopedic examination performed by Dr. Aubrey Swartz, a Board-certified orthopedic surgeon, that these aggravated conditions had resolved by August 25, 2008. By decision dated June 14, 2010, the Board affirmed a hearing representative's May 19, 2009 decision which found that OWCP met its burden of proof to terminate appellant's compensation benefits for the conditions of temporary aggravation of degenerative disease of the lumbar spine, cervical spine, left shoulder and left lower extremity effective August 25, 2008.³

On March 29, 2010 appellant underwent another authorized right knee arthroscopic surgery. He returned to work on May 19, 2010 in part-time capacity and was released to full duty as of June 18, 2010. OWCP subsequently expanded the claim to include right tarsal tunnel syndrome, right Achilles tendinitis, right foot/ankle tenosynovitis, right villonodular synovitis and recurrent dislocation of right foot/ankle. On January 5, 2011 appellant underwent right Achilles tendon surgery.

On March 17, 2011 appellant, through his representative, requested reconsideration of OWCP's decision terminating his medical compensation benefits for the conditions of temporary aggravation of degenerative disease of the lumbar spine, cervical spine, left shoulder and left lower extremity effective August 25, 2008. He indicated that reconsideration was being requested based on "all the necessary medical evidence that has been sent to your Office" and referenced the medical reports of Dr. Michael Croveti, an osteopath and orthopedic surgeon, and Dr. Reynold Rimoldi, a Board-certified orthopedic surgeon.

Evidence received subsequent to the May 19, 2009 hearing representative's decision and on reconsideration included medical reports from the period September 7, 2008 through March 2, 2011 including diagnostic test reports, procedure reports, physical therapy reports and treatment reports from Drs. Croveti and Dr. Rimoldi.⁴ In most of the treatment reports, appellant attributed the claimed conditions to the accepted March 1, 2004 work injury.

The relevant records and treatment reports for the claimed conditions include an August 24, 2010 cervical spine radiology report containing an impression of multilevel degenerative changes in a pattern similar to the 2008 examination with no evident acute abnormality.

³ *Id.*

⁴ The majority of the medical evidence pertained to continuing medical treatment for the accepted right knee and leg conditions. These conditions are not at issue in the present appeal.

In a May 20, 2010 report, Dr. Crispino Santos, a Board-certified pain specialist, evaluated appellant for pain management. He provided an assessment of C4-5 and C5-6 bulge with foraminal stenosis and L3-4, L4-5 and L5-S1 bulge with foraminal stenosis and recommended epidural injections. No opinion was rendered on the cause of appellant's conditions. The record reflects that appellant underwent a lumbar epidural on October 28, 2010 and a cervical epidural on November 11, 2010.

Several progress reports from Dr. Croveti were submitted. In a December 2, 2010 report, Dr. Croveti indicated that he disagreed with the Board's conclusion that OWCP met its burden of proof in terminating the medical benefits for the conditions of temporary aggravation of left shoulder and left lower extremity effective August 25, 2010. He stated: following his knee replacement of June 26, 2007, appellant suffered an injury to his left shoulder and aggravation of his left knee. Prior to these episodes appellant states and documentation supports that he had no complaints of pain or dysfunction noted. Following the injury, the August 17, 2007 magnetic resonance imaging (MRI) scan showed partial rotator cuff tear and a repeat MRI scan of January 7, 2008 suggested labral tear, small partial thickness of the supraspinatus tendon, tendinosis and acromioclavicular joint arthrosis. Dr. Croveti indicated that he, Dr. Rimoldi and Dr. Swartz have continued to evaluate appellant since the June 26, 2007 total knee replacement surgery and subsequent injuries to the left shoulder and aggravation of the left knee. He stated that his records continue to reflect continued complaints since that time and documentation of dysfunction, decreased range of motion and continued pain. Dr. Croveti opined that appellant be continued under workers' compensation claim for treatment of his left lower extremity and left shoulder.

Several progress reports from Dr. Rimoldi were also submitted. In a March 2, 2011 report, Dr. Rimoldi indicated that, based on information provided by appellant's attorney, OWCP believed that appellant was cured and had no residuals from his work-related injury. He indicated that he started treating appellant in April 2005 for his right knee. This consisted of arthroscopy with partial medial meniscectomy as well as a total knee replacement. At the same time appellant injured his knee, he stated that he injured his lumbar spine and Dr. Rimoldi indicated that he followed him with MRI scans of the lumbar spine, the first MRI scan being March 2006. Dr. Rimoldi indicated that appellant had multilevel disc hernias at L3-4, L4-5 and L5-S1 and later MRI scans showed consistent findings. Appellant later indicated that, after undergoing therapy for his right knee replacement, he injured his cervical spine while performing the therapy. He also complained of left shoulder symptoms. Dr. Rimoldi indicated that he opined MRI scans of the cervical spine in late 2007 and early 2008 which showed C6-7 disc protrusion and with an annular tear and significant rotator cuff tendinosis. He indicated "given his history of no previous complaints, it is apparent to me that this patient sustained aggravations of his cervical and lumbar spine as an indirect or direct result respectively secondary to the original work-related injury that occurred on March 1, 2004 when he was carry[ing] a bin of mail." Dr. Rimoldi indicated that appellant requires ongoing treatment and still has symptoms related to his cervical and lumbar spine as well as his left shoulder and right knee.

By decision dated August 10, 2011, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

By its June 14, 2010 decision, the Board found that OWCP met its burden of proof to terminate appellant's consequential conditions effective August 25, 2008. A decision of the Board is final upon expiration of 30 days from the date of the decision.⁵

As OWCP met its burden of proof to terminate appellant's conditions and medical compensation benefits effective August 25, 2008, the burden shifted to appellant to establish that he had continuing disability causally related to his accepted employment injury.⁶ To prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.⁷

Under FECA, when employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation. When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased, even if the employee is medically disqualified from continuing employment due to the underlying condition.⁸

ANALYSIS

The Board finds that appellant has not established that he has any continuing residuals of his temporary aggravation of degenerative disease of the lumbar spine, cervical spine, left shoulder and left lower extremity which OWCP found and the Board previously affirmed had resolved by August 25, 2010.

After termination of medical compensation benefits for temporary aggravation of these conditions, appellant submitted additional medical evidence. As previously noted, this appeal only concerns the issue of continued residuals from the temporary aggravation of appellant's preexisting degenerative disease of the lumbar spine, cervical spine, left shoulder and left lower extremity. Much of the medical evidence submitted by appellant pertains to other conditions and need not be addressed.

In his December 20, 2010 report, Dr. Croveti disagreed that the conditions of temporary aggravation of the left shoulder and left lower extremity had resolved effective August 25, 2010. He opined that such conditions had not resolved as his records reflect continued complaints since the total knee replacement surgery of June 25, 2007 and there is documentation of dysfunction, decreased range of motion and continued pain. Dr. Croveti also reported that, prior to appellant's knee replacement, appellant stated and the documentation supports that there were no complaints of pain or dysfunction noted. His rationale for opining that the temporary

⁵ 20 C.F.R. § 501.6(d). There is no indication in the case record that appellant filed a petition for reconsideration of the Board's June 14, 2010 decision pursuant to 20 C.F.R. § 501.7. See *W.M.*, Docket No. 11-1005 (issued November 23, 2011).

⁶ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

⁷ *I.J.*, 59 ECAB 408 (2008).

⁸ See *Raymond W. Behrens*, 50 ECAB 221 (1999).

aggravation of the left shoulder and left lower extremity continues is based on the fact that appellant's symptoms appeared after the knee replacement surgery. The Board has held that a temporal relationship alone is insufficient to establish causal relationship.⁹ The assertion that appellant's underlying conditions were asymptomatic prior to the total right knee replacement surgery and remained symptomatic thereafter is not sufficient to show that the total right knee replacement surgery aggravated the underlying degenerative left knee condition or caused appellant's left shoulder condition. Furthermore, Dr. Croveti failed to otherwise address why any of the conditions were employment related and provide rationale in support of his opinion.¹⁰ In any event, this report does not give reasoned support for claim acceptance beyond the period authorized by OWCP.

In his March 2, 2011 report, Dr. Rimoldi indicated that appellant still has symptoms related to his cervical and lumbar spine as well as his left shoulder and right knee which required ongoing treatment. He explained that given appellant's history of no previous complaints appellant had sustained aggravations of his cervical and lumbar spine as an indirect or direct result respectively secondary to the March 1, 2004 work injury. Dr. Rimoldi's report is of diminished probative value because he failed to provide sufficient medical rationale explaining how or why the temporary aggravation of the accepted conditions continued past the period authorized by OWCP.¹¹ Dr. Rimoldi also appears to be under the impression that OWCP found that appellant was "cured" and had no residuals of the conditions at issue. This is incorrect as Dr. Swartz previously found that, while the accepted temporary aggravation had resolved, appellant's continuing symptoms from these conditions were due to his nonindustrial degenerative disease.

None of the reports submitted by appellant after the termination of medical compensation benefits for temporary aggravation of his conditions included a rationalized opinion regarding the causal relationship between his current conditions and his accepted conditions past the period authorized by OWCP. 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 the condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹² Causal relationships must be established by rationalized medical opinion evidence. Consequently, appellant did not establish that he had any employment-related condition or disability after August 25, 2010.

Appellant's attorney argued that the decision is contrary to fact and law. However, in the absence of well-reasoned medical opinion explaining how or why the temporary aggravation of his preexisting conditions continued past the period authorized by OWCP, he failed to meet his burden. As noted above, appellant submitted no well-reasoned medical opinion explaining this relationship.

⁹ *Louis R. Blair, Jr.*, 54 ECAB 348, 350 (2003).

¹⁰ *K.W.*, 59 ECAB 271 (medical evidence that does not offer any opinion on the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹¹ *See supra* note 9; *John F. Glynn*, 53 ECAB 562 (2002) (an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship).

¹² *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant failed to establish that he had any continuing residuals of his temporary aggravation of degenerative disease of the lumbar spine, cervical spine, left shoulder and left lower extremity after August 25, 2008.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated August 10, 2011 is affirmed.

Issued: May 9, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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