United States Department of Labor
Employees' Compensation Appeals Board

J.A., Appellant	)	
	)	**Docket No. 12-603**
and	)	**Issued: October 10, 2012**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Morganville, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 19, 2012 appellant, through his attorney, filed a timely appeal of an October 13, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his consequential injury claim. Pursuant to Federal Employees' Compensation Act[1] (FECA) 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 cervical condition for which surgery was warranted as a consequence of his October 1, 2009 employment injuries.

On appeal, counsel contends that the medical reports of appellant's attending physicians establish that appellant's cervical condition and proposed surgery were causally related to his accepted employment-related injuries.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on October 1, 2009 appellant, then a 60-year-old rural carrier, sustained left knee and shoulder sprain, left thumb sprain/contusion, neck sprain and localized primary osteoarthritis of the left hand as a result of a motor vehicle accident. Subsequently, it accepted that he sustained a recurrence of disability as of January 28, 2010 due to his authorized arthroscopic left thumb surgery which was performed on that date. Appellant did not return to work following surgery and received temporary total disability compensation.

In a March 22, 2010 medical report, Dr. Steven P. Lisser, an attending Board-certified orthopedic surgeon, noted that appellant complained about pain, swelling and stiffness of the left thumb. He also complained about recurrent left knee pain. Dr. Lisser also stated that appellant's increasing neck pain was related to his accident. He advised that appellant had post-traumatic arthritis of the left thumb carpometacarpal (CMC) joint and left knee medial meniscus tear.

In an April 16, 2010 report, Dr. Keith M. Rinkus, an attending Board-certified orthopedic surgeon, noted appellant's left upper extremity and neck symptoms. He listed examination and diagnostic findings and diagnosed cervical adjacent level stenosis with left upper extremity radiculopathy at C5.

On April 21, 2010 appellant was referred to Dr. Jerome D. Rosman, a Board-certified orthopedic surgeon, for a second opinion. In a May 10, 2010 report, Dr. Rosman advised that appellant's accepted employment-related conditions had reached maximum medical improvement as of 16 weeks post the date of onset, except for his accepted left hand osteoarthritis condition as he was recovering from surgery. He noted that, following the expected result of the left hand surgery, appellant would be able to return to his prior position. Dr. Rosman recommended authorization for eight weeks of physical therapy and treatment for the accepted left hand condition. He also recommended that appellant be reevaluated to determine his work capacity. Dr. Rosman noted appellant's complaint of left knee pain and scheduled surgery. He advised that magnetic resonance imaging and physical examination findings were consistent with degenerative changes in the menisci, but this condition was not causally related to the accepted injuries.

By letter dated May 3, 2010, OWCP accepted appellant's claim for left knee medial meniscus tear.

On May 24, 2010 appellant underwent authorized arthroscopic left knee surgery, which was performed by Dr. Steven Friedel, a Board-certified orthopedic surgeon, to treat his left knee medial and lateral meniscus tear.

On May 21 and June 4 and 25, 2010 appellant received left C5 transforaminal epidural injections.

In a July 15, 2010 report, Dr. Michael A. Romello, a Board-certified physiatrist, noted the treatment appellant received for his neck pain. He listed findings on physical examination and diagnosed lumbar spondylolysis, lumbosacral facet arthritis and cervical spondylolysis that was stenosis and left-sided C5 radiculopathy.

By letter dated August 5, 2010, OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Rosman for a second opinion.

In an August 30, 2010 report, Dr. Rosman advised that the accepted employment-related conditions had resolved and appellant had reached maximum medical improvement. He found that appellant had residuals and minor disability of the left hand secondary to the accepted left thumb contusion and surgery. Appellant was permanently disabled for work due to preexisting left knee degenerative menisci and preexisting degenerative cervical spondylolysis that were not causally related to the accepted injuries. Dr. Rosman concluded that appellant could perform his date-of-injury position on a full-time basis with permanent physical restrictions related to his preexisting nonemployment-related left knee and cervical conditions.

On September 20, 2010 OWCP issued a notice proposing to terminate appellant's compensation benefits based on Dr. Rosman's August 30, 2010 opinion.

In an October 4, 2010 letter, appellant, through his attorney, disagreed with the proposed action, contending that Dr. Rosman's August 30, 2010 report did not constitute the weight of the medical opinion evidence.

In reports dated August 23, September 17 and October 11, 2010, Dr. Rinkus reiterated his prior diagnosis of cervical adjacent level stenosis with left upper extremity radiculopathy at C5. In the October 11, 2010 report, he noted appellant's complaints of continued left upper extremity pain and considerable neck pain. Dr. Rinkus stated that appellant required neck surgery and that the decision finding that this treatment was not causally related to the October 2009 employment injuries was nonsensical. He noted appellant's prior cervical surgery in 1985 at levels that were subjacent to the current levels of interest. Dr. Rinkus stated that those lower levels were successfully fused. He related that it was a well-known phenomenon that there could be adjacent level stenosis and degeneration that remained asymptomatic most of time. Dr. Rinkus advised that appellant was asymptomatic in his left upper extremity until the October 2009 employment injuries. He, therefore, concluded that there was a temporal relationship to the accepted injuries.

In an August 16, 2010 report, Dr. Romello reiterated his prior diagnosis of cervical spondylolysis that was stenosis and left-sided C5 radiculopathy.

In a November 18, 2010 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective November 20, 2010, finding that the evidence submitted was insufficient to outweigh the weight accorded to Dr. Rosman's opinion that appellant no longer had any residuals or disability causally related to his October 1, 2009 employment injuries.

By letter dated November 23, 2010, appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

In reports dated May 17 and October 11, 2010, Dr. Lisser advised that appellant had, among other things, post-traumatic arthritis of the right wrist and cervical adjacent level stenosis with left upper extremity radiculopathy at C5.

In a June 28, 2011 decision, an OWCP hearing representative reversed the November 18, 2010 termination decision, finding that Dr. Rosman's opinion was not well rationalized because

he did not clearly respond to OWCP's questions and relied on a statement of accepted facts that was incomplete. In addition, the hearing representative found that the medical evidence of record was insufficient to establish that appellant's cervical spine arthrosis was causally related to the accepted October 1, 2009 employment injuries.

By letter dated July 19, 2011, appellant's attorney requested reconsideration, contending that Dr. Rinkus' July 7, 2011 report was sufficient to establish a causal relationship between appellant's need to undergo neck surgery and his October 1, 2009 employment injuries. In the July 7, 2011 report, Dr. Rinkus stated that there was a causal relationship between appellant's need for further treatment and surgery and the October 1, 2009 accepted injury. At that time, he could not comment on permanency or disability as appellant had not completed his treatment or surgery for which he requested authorization.

In an August 20, 2011 report, Dr. Douglas W. Chudzik, an attending internist, noted that appellant had been under his care since October 5, 2009 for injuries sustained in the October 1, 2009 employment incident. Appellant had several conditions, namely severe cervical disc problems, meniscal tear of the left knee and lumbosacral disc problems. Dr. Chudzik concurred with Dr. Rinkus' recommendation that appellant undergo cervical spinal decompression and fusion due to his cervical disc symptoms.

In reports dated December 13, 2010 and May 23, 2011, Dr. Lisser reiterated the diagnosis of post-traumatic arthritis of the right wrist and advised that appellant had chronic median neuropathy of the right wrist.

In reports dated July 6 and 20 and August 12, 2011, Dr. Friedel advised that appellant had a left knee strain and chondromalacia.

In an October 13, 2011 decision, OWCP denied modification of its June 28, 2011 decision. It found that the medical evidence submitted did not provide a rationalized opinion addressing the causal relationship between the claimed cervical condition and proposed surgery and the accepted October 1, 2009 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 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

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

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]

ANALYSIS

OWCP accepted that on October 1, 2009 appellant sustained an employment-related left knee and shoulder sprain, left thumb sprain/contusion, neck sprain, localized primary osteoarthritis of the left hand and left knee medial meniscus tear. Appellant contends that he sustained a cervical condition as a result of the accepted injuries that required surgery. The Board finds that he has not submitted sufficient medical evidence to establish his claim.

Dr. Lisser's March 22, 2010 report found that appellant's increasing neck pain was causally related to the October 1, 2009 employment injuries. The Board has consistently held that pain is a symptom, not a compensable medical diagnosis[6] and a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[7] Dr. Lisser did not adequately explain how the motor vehicle accident would cause or contribute to the claimed neck condition. Lacking this medical explanation, the Board finds that Dr. Lisser's report is insufficient to establish appellant's claim.[8] Dr. Lisser's May 17 and October 11, 2010 reports are insufficient as they did not provide a medical opinion addressing the causal relationship between appellant's cervical adjacent level stenosis with left upper extremity radiculopathy at C5 and the accepted October 1, 2009 employment injuries. His other reports addressed appellant's right wrist conditions and failed to provide an opinion addressing whether he sustained a cervical condition that required surgery due to the accepted injuries. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[9] For the

[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] *C.F.*, Docket No. 08-1102 (issued October 10, 2008); *Robert Broome*, 55 ECAB 339 (2004).

[7] *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

[8] *S.S.*, 59 ECAB 315, 322 (2008); *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

[9] *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

stated reasons, the Board finds that Dr. Lisser's reports are insufficient to establish appellant's claim.

Dr. Rinkus' reports dated August 23 through September 17, 2010, found that appellant had cervical adjacent level stenosis with left upper extremity radiculopathy at C5. He did not provide any medical opinion addressing the causal relationship between the diagnosed cervical conditions and the October 1, 2009 employment injuries.[10] In an October 11, 2010 report, Dr. Rinkus noted appellant's complaints of continued left upper extremity pain and considerable neck pain. He opined that there was a temporal relationship between the accepted injuries and cervical stenosis and degeneration which appeared to be based on his opinion that appellant was asymptomatic prior to the accepted employment injuries according to a well-known phenomenon. Dr. Rinkus noted appellant's 1985 cervical surgery, which successfully fused lower levels that were subjacent to the current levels of interest. He stated that there could be adjacent level stenosis and degeneration which remained asymptomatic. A medical opinion stating that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but became symptomatic is generally insufficient, without supporting rationale, to establish causal relationship.[11] Dr. Rinkus failed to provide a full medical history and rationale explaining how the October 1, 2009 employment injuries caused the cervical stenosis and degeneration conditions. In a July 7, 2011 report, he opined that there was a causal relationship between the proposed neck surgery and the accepted injuries. Dr. Rinkus did not provide adequate medical rationale in support of his opinion. The Board has held that medical reports lacking a rationale on causal relationship are of diminished probative value.[12] The Board finds that Dr. Rinkus' reports are insufficient to establish appellant's claim.

Dr. Romello's July 15 and August 16, 2010 reports found that appellant had cervical spondylolysis with stenosis and left-sided C5 radiculopathy, but he failed to provide any medical opinion addressing the causal relationship between the cervical conditions and the accepted employment injuries.[13] The Board finds that Dr. Romello's report is insufficient to establish appellant's claim

Similarly, Dr. Chudzik's August 20, 2011 report which addressed appellant's cervical disc symptoms and need for surgery to treat the diagnosed condition is insufficient to establish his claim. He did not provide a medical opinion addressing whether the diagnosed condition and proposed surgery were causally related to the October 1, 2009 employment injuries.[14]

Dr. Friedel's reports addressed appellant's left knee conditions. The Board finds that his reports are of diminished probative value because he failed to provide an opinion addressing

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[10] *Id.*

[11] *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

[12] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

[13] *See* cases cited, *supra* note 9.

[14] *Id.*

whether the October 1, 2009 employment injuries caused the current cervical injury and proposed surgery.[15]

On appeal, appellant's attorney contended that the medical reports of appellant's attending physicians establish that appellant's cervical condition and proposed surgery were causally related to his accepted employment-related injuries. As stated, this evidence does not provide a rationalized medical opinion explaining the causal relationship between appellant's diagnosed cervical conditions and proposed surgery and the accepted October 1, 2009 employment injuries.

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 has failed to establish that he sustained a cervical condition for which surgery was warranted as a consequence of his October 1, 2009 employment injuries.

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[15] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the October 13, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 10, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board