United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 12-1573**
	)	**Issued: April 2, 2013**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Leavenworth, KS, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case submitted on the record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 17, 2012 appellant, through her attorney, filed a timely appeal from June 15, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that after the July 17, 2012 filing of the current appeal, OWCP's Branch of Hearings and Review issued a November 29, 2012 decision affirming the June 15, 2012 decision denying authorization for surgery, the same issue presently before the Board. An OWCP decision issued while the Board has jurisdiction over the matter in dispute is null and void. *Lawrence Sherman*, 55 ECAB 359, 360 n.4 (2004); *see also* 20 C.F.R. § 501.2(c)(3). Because the Board had already obtained jurisdiction over the question of the requested surgery should be authorized, the Branch of Hearings & Review could not simultaneously exercise jurisdiction over that same issue. Accordingly, the November 29, 2012 decision is null and void.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish a consequential injury to her back, neck, ankles, hips, knees and shoulders; and (2) whether OWCP properly denied authorization for shoulder surgery.

FACTUAL HISTORY

On April 29, 2011 appellant, then a 53-year-old medical administration officer, claimed a traumatic injury claim on April 28, 2011, after exiting her government vehicle in a workplace parking lot, she fell on an uneven surface and hit the curb with her ankles, landing on her knees, and striking her arms as she tried to break the fall. She alleged injury to her ankles, knees, hips, right upper arm, back, neck and shoulders. Appellant did not stop work.[3]

OWCP received several diagnostic reports from Dr. Kenneth Mann, a Board-certified internist. They included a May 13, 2011 x-ray of the right shoulder, which revealed no fracture or displacement. X-rays of the cervical spine, read by Dr. Mann revealed mild degenerative disc disease at C5-6 and no fracture or displacement. Bilateral ankle, right shoulder and left hip x-rays showed no fracture of displacement. Also received was an April 29, 2011 nurse's note describing the incident and appellant's symptoms and a May 13, 2011, note from a physician's assistant.

In a July 1, 2011 report, Dr. James Brannon, a Board-certified surgeon, noted that appellant fell at work and landed on her shoulder. He noted that she related that she wanted to be sure that her shoulder was "ok" as she had three prior surgeries to her shoulder before she had a saucerization and "it was great." Dr. Brannon further noted that appellant's concern as the back of her shoulder was hurting. He recommended a magnetic resonance imaging (MRI) scan and noted that she fell on "April 18" and the pain had not quiesced. Dr. Brannon opined that he believed that there was potential disease at the posterior labrum. He diagnosed left shoulder joint pain and history of avascular necrosis (AVN).

In a letter dated August 15, 2011, appellant indicated that she continued to have ongoing pain in both knees, shoulders, her left hip, ankles, back and neck since her fall. She noted that

[3] Appellant has multiple other claims that include a June 9, 1998 traumatic injury in which she was struck by an elevator door at work. Claim File No. xxxxxx010. This was accepted for left shoulder sprain, neck sprain and lumbar sprain, left shoulder impingement syndrome and aseptic necrosis of the left humerus. Appellant had left shoulder surgery on December 28, 1999, April 5, 2002, October 30, 2006 and January 18, 2010. She returned to work regular duty on March 29, 2010. Claim File No. xxxxxx791, date of injury January 2, 2002, was accepted for lumbar strain, bilateral chondromalacia, abrasion and friction burn of right elbow, bilateral meniscus tears with surgical repairs, bilateral knee contusions, herniated lumbar disc at L4-5 on the left side and hemilaminectomy at L4-5 nerve roots with a lumbar microdiscectomy performed on October 2, 2002. A recurrence of December 20, 2006 was accepted and consequential injury claim was accepted for bilateral chondromalacia of the patella. In claim File No. xxxxxx320, an August 16, 2011 traumatic injury claim was accepted for contusion of knee and lower leg, bilateral and sprain of shoulder and upper arm, right. An occupational disease claim, File No. xxxxxx245, was accepted for bilateral carpal tunnel syndrome. OWCP doubled these claims with the present claim under File No. xxxxxx010.

when she fell, she hit so hard that her legs were black and blue from her feet to her knees and her knees were swollen.

In treatment notes dated September 2, 2011, Dr. Brannon reported that appellant fell down the stairs on August 16, 2011 with right shoulder and bilateral knee pain. He diagnosed right sprain/strain of the shoulder and upper arm and bilateral knee contusion.

On November 30, 2011 OWCP accepted the claim for contusion of the left knee and lower leg and sprain of the left shoulder and upper arm.

On December 20, 2011 appellant requested that her claim be expanded to include a cervical and lumbar condition so that treatment could be provided for continued symptoms in these areas related to the April 28 and August 16, 2011 falls at work. She also noted that the treating physician recommended additional left shoulder surgery and asked that OWCP authorize this as being causally related to the work falls.

In a December 20, 2011 report, Dr. Branson noted that appellant reported the history of injury and stated that her left shoulder pain had resolved after a saucerization but that she had renewed pain after her fall at work. He stated that a left shoulder MRI scan showed an intraosseous fracture, posteriorly about the humeral head with evidence of a possible rotator cuff tear. Dr. Branson recommended treating the fracture by removing the plate and screw and regrafting the humeral head with bone marrow aspirate. He concluded that the fracture was secondary to the fall at work. A December 20, 2011, left shoulder MRI scan read by Luke Wilson, a Board-certified diagnostic radiologist, revealed mild infraspinatus tendinosis and open reduction for fixation of the left humerus. Dr. Wilson noted that there was a compression screw and side plate in the left proximal humerus but that the bone marrow signal intensity was otherwise unremarkable and the glenohumeral joint was intact with a physiological amount of fluid. There was attenuation of the supraspinatus tendon but no discrete cuff tear was identified. The acromioclavicular joint and coracoclavicular ligaments were intact.

In a letter dated January 11, 2012, OWCP requested that appellant submit additional information supporting that her back and neck condition were work related. In a separate January 11, 2012 letter, it advised her that additional medical evidence was required to support that the need for left shoulder surgery was causally related to the work incidents.

In January 12, 2012 left knee x-rays read by Dr. Robert Newth, a Board-certified diagnostic radiologist, revealed degenerative changes with no fracture or dislocation. A January 12, 2012 MRI scan of the left knee, read by Dr. Michael P. Green, a Board-certified diagnostic radiologist, revealed a partial tear of the cruciate ligament and a large tear of the medial meniscus.

In a January 17, 2012 report, Dr. Brannon noted appellant's history and explained that the left knee showed secondary degenerative joint disease (DJD) and primary AVN characterized by mixed signal heterogeneity. He advised that there was osteophyte formation along the medial femoral condyle, a degenerative tear of the posterior horn of the medial meniscus and "PFJ" disease. Dr. Brannon recommended saucerization of the left knee and injection of bone marrow. He opined that he did not believe that appellant should have her knee replaced. Dr. Brannon

diagnosed pain in the left knee with primary AVN and secondary DJD with a degenerative tear of the posterior horn of the medial meniscus.

Treatment notes dated January 20, 2012 from Dr. Jeffrey Lawhead, Board-certified in family medicine, indicated that he treated appellant's knee, shoulder, neck and low back complaints following her fall on April 28, 2011. He diagnosed left shoulder injury status post-surgery, bilateral knee injury with surgery, cervicalgia, lumbago and status post fall. The physician recommended physical therapy.

In a January 26, 2012 letter, appellant indicated that her April 28, 2011 injury was to her back, ankles, hips, knees and shoulders. She also detailed her history of injury and treatment.

By decision dated February 29, 2012, OWCP denied appellant's claim for an expansion to include: back, neck, ankles, hips, knees and shoulders.

On March 5, 2012 appellant requested reconsideration. In a letter dated March 12, 2012, she indicated that her claim needed to be expanded to include shoulder pain, rupture of the rotator cuff and AVN.

In a letter dated March 19, 2012, OWCP advised appellant that additional evidence was needed regarding her request to expand her claim to include rupture of the rotator cuff and AVN. It advised her that regarding her request for her left shoulder surgery, her physician should indicate the specific procedure and submit the request himself.

In a letter dated March 23, 2012, appellant indicated that she saw Dr. Brannon concerning her fall on April 28, 2011 and that after her visit, she had an MRI scan. She explained that he indicated that her claim should be expanded to include shoulder pain, rupture of the rotator cuff and AVN. Appellant indicated that it was clear that Dr. Brannon was recommending surgery to her shoulder to repair the damage from the fall. In a letter dated March 24, 2012, she repeated her request for surgery. Appellant also noted that the diagnosis for AVN was already in claim File No. xxxxxx010. On March 26, 2012 she repeated her request to expand her claim. Appellant also described her condition.

OWCP referred the request for left shoulder surgery to OWCP's medical adviser for review. In a report dated April 18, 2012, the medical adviser noted that appellant was seen by a nurse practitioner on April 29, 2011 who indicated that she was ambulatory, had pain in her back, ankles hips knees and shoulders. He explained that the left shoulder MRI scan of December 20, 2011 revealed no abnormalities that supported Dr. Branson's surgery recommendation. The medical adviser observed that Dr. Wilson's MRI scan findings differed from the findings that Dr. Branson attributed to the MRI scan. He indicated that the MRI scan revealed nothing more than tenderness which might be chronic considering the numerous left shoulder operative procedures that the claimant had predating the fall. The medical adviser indicated that OWCP should not authorize any surgery to the left shoulder and it should not accept any diagnosis for the left shoulder, other than that which was already accepted.

On June 15, 2012 OWCP denied the requested left shoulder surgery finding that the medical evidence was not sufficient to support this was warranted and acceptable treatment of

the work-related condition. In another June 15, 2012 decision, it also denied modification of the February 29, 2012 decision.

LEGAL PRECEDENT -- ISSUE 1

The general rule respecting consequential injuries is 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] The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.[5] With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.[6]

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.[7]

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[8] To establish a causal relationship between the condition claimed, as well as any attendant disability and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.[9] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[10] Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the 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 specific employment factors identified by the claimant.[11]

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

[5] *Id.; Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

[6] *Kathy A. Kelley*, 55 ECAB 206 (2004).

[7] *S.M.*, 58 ECAB 166 (2006), *citing* A. Larson, *The Law of Workers Compensation* § 10.01 (2004).

[8] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[9] *Jennifer Atkerson*, 55 ECAB 317 (2004).

[10] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[11] *Leslie C. Moore*, 52 ECAB 132 (2000).

Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[12]

ANALYSIS -- ISSUE 1

OWCP denied appellant's request to expand her claim to include a consequential injury to her back, neck, ankles, hips, knees and shoulders. The issue is whether she has met the burden of proof to establish that her diagnosed conditions are causally related to her accepted injury. The Board finds that appellant has not met her burden of proof.

In support of her request, appellant included a July 1, 2011 report, from Dr. Brannon, who noted that she fell at work and landed on her shoulder. Dr. Brannon also explained that she had three prior surgeries to her shoulder before she had a saucerization and "it was great." He further noted that appellant was really concerned as the back of her shoulder was hurting. Dr. Brannon recommended an MRI scan as he believed that there was "potential disease at the posterior labrum. He diagnosed left shoulder joint pain and history of AVN. In his September 2, 2011 treatment notes, Dr. Brannon referred to an August 16, 2011 incident where appellant fell down stairs and sustained injuries to her right shoulder and had bilateral knee pain. He diagnosed right sprain/strain of the shoulder and upper arm and bilateral knee contusion. In a December 20, 2011 report, Dr. Brannon also indicated that the fall at work caused a fracture of the left humeral head. However, he did not offer a reasoned explanation that appellant's conditions were a consequence of her accepted conditions. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.[13]

In his January 17, 2012 report, Dr. Brannon explained that the left knee showed secondary DJD and primary avascular necrosis characterized by mixed signal heterogeneity. Additionally he advised that there was osteophyte formation along the medial femoral condyle, a degenerative tear of the posterior horn of the medial meniscus and "PFJ" disease. Dr. Brannon recommended saucerization of the left knee, saucerization and injection of bone marrow. He opined that he did not believe that appellant should have her knee replaced and diagnosed pain in the left knee with primary AVN and secondary DJD with a degenerative tear of the posterior horn of the medial meniscus. However, Dr. Brannon did not offer any opinion on causal relationship.[14] Thus, this report is of limited probative value.

Reports from other physicians are insufficient as they did not specifically address how any additional conditions were a consequence of appellant's fall at work.[15] The record contains notes from a nurse and a physician's assistant. Health care providers such as nurses and

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[12] *Ernest St. Pierre*, 51 ECAB 623 (2000).

[13] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[14] *Id.*

[15] *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

physician's assistants are not physicians under FECA. Thus, their opinions have no weight or probative value.[16]

The Board finds that appellant has not met her burden of proof to establish any additional conditions causally related to her accepted work injury. Therefore, OWCP properly denied her request to expand her claim.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.[17] OWCP has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. It therefore has broad administrative discretion in choosing means to achieve this goal.[18] The only limitation on OWCP's authority is that of reasonableness.[19]

While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[20] Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[21] For a surgery to be authorized, a claimant must submit evidence to show that the requested procedure is for a condition causally related to the employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.[22]

ANALYSIS -- ISSUE 2

Appellant requested authorization for left shoulder surgery. In a December 20, 2011 report, Dr. Branson asserted that her left shoulder pain had resolved before her fall at work and that she had renewed pain after the fall. He asserted that a left shoulder MRI scan showed an intraosseous fracture at the humeral head with evidence of a possible rotator cuff tear. Dr. Branson recommended surgery and advised that this was secondary to the fall at work.

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[16] *Jane A. White,* 34 ECAB 515, 518 (1983). *See* 5 U.S.C. § 8101(2).

[17] 5 U.S.C. § 8103(a).

[18] *Dale E. Jones*, 48 ECAB 648, 649 (1997).

[19] *Daniel J. Perea*, 42 ECAB 214 (1990) (holding that abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts).

[20] *Kennett O. Collins, Jr.*, 55 ECAB 649, 654 (2004).

[21] *M.B.*, 58 ECAB 588 (2007).

[22] *R.C.*, 58 ECAB 238 (2006).

However, the Board notes that he provided little rationale to support his conclusion that the need for surgery was due to workplace fall. Dr. Branson's opinion is also based on an incorrect understanding of appellant's MRI scan findings.[23] As noted, OWCP medical adviser's April 18, 2012 report explained that Dr. Wilson's December 20, 2011 left shoulder MRI scan did not list any fracture or rotator cuff tear. He explained that the surgery should not be authorized based on the diagnostic MRI scan results which showed only tendinosis. The medical adviser indicated that OWCP should not authorize any surgery to the left shoulder, nor accepted any conditions for the shoulder other than that which was previously accepted. Appellant did not provide any further medical evidence to support or clarify the need for the requested surgery.

Based on the evidence of record, OWCP reasonably concluded that the proposed surgery was not warranted. It did not abuse its discretion in denying authorization for arthroscopic surgery in this case.

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 not met her burden of proof to establish a consequential injury to her back, neck, ankles, hips, knees and shoulders. The Board also finds that OWCP properly denied authorization for left shoulder surgery.

[23] *See Beverly R. Jones*, 55 ECAB 411 (2004) (medical conclusions based on inaccurate or incomplete histories are of diminished probative value).

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 2013
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