

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

J.D., Appellant)	
and)	Docket No. 13-1272
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Port Angeles, WA, Employer)	Issued: September 17, 2013
)	

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 29, 2013 appellant filed a timely appeal from a January 24, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for an employment-related injury. 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 met his burden of proof to establish that he sustained consequential cervical and right arm conditions in the performance of duty causally related to factors of his federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 27, 2011 appellant, then a 44-year-old lead forestry technician, filed an occupational disease claim (Form CA-2) alleging that he developed cervical and right arm conditions due to a traumatic injury he sustained in 1998. He stated that following his injury he had continued to work as a wild land firefighter, fighting fires, cutting trees, digging fire lines and carrying heavy backpacks.

In an August 9, 2011 letter, OWCP requested additional factual and medical information from appellant. It allotted him 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted narrative statements indicating that on August 18, 1998 a sky crane with a belly tank unexpectedly dropped a full load (up to 1,600 gallons) of water on him and his squad on the Locum Fire in Idaho, which caused trees to fall and his head was hit by a tree top. He stated that he had previously filed a traumatic injury claim under OWCP File No. xxxxxx169 and believed his current conditions were causally related to his 1998 injury.

Appellant submitted a June 4, 2004 magnetic resonance imaging (MRI) scan of the cervical spine which showed a three- to four-millimeter disc and osteophytic ridge at C5-6 and an abnormal electromyogram and nerve conduction study (EMG/NCS) dated December 20, 2010. A November 30, 2010 x-ray of the cervical spine revealed small right cervical rib and degenerative disc disease at C5-6. A December 2, 2010 MRI scan of the cervical spine showed C5-6 degenerative disc disease, minimal right and mild left C5-6 foraminal stenosis, C6-7 shallow posterior disc protrusion without significant mass effect and minimal degenerative anterolisthesis of C7 on T1. Appellant also submitted a position description and notifications of personnel action (Form SF-50) dated May 20, 2000 through May 22, 2011.

In a July 26, 2011 report, Dr. Tristan M. McGovern, a Board-certified orthopedic surgeon, diagnosed carpal tunnel syndrome, neuralgia neuritis and cervicalgia. He opined that it was difficult to ascertain exact cause of the symptoms as they could occur in the normal population without trauma but that there may be some connection to an old injury.

In a July 29, 2011 witness statement, Anthony Engel, appellant's supervisor, indicated that appellant worked for the Baker River Interagency Hotshot crew in 1998. He stated that appellant was injured in 1998 on the Loosum Fire in the Boise National Forest in Idaho when a helicopter made a water drop above the Baker River Crew causing trees to fall and one of the tree tops struck him. Appellant was examined by an emergency medical technician and the extent of his injuries appeared to be soreness and stiffness in his neck. He was examined again and completed a CA-1 form to document the injury. Mr. Engel stated that, although the initial assessments of appellant's injury revealed only a minor injury, given the damage to his personal protective equipment and other gear, it was likely that the full extent of his injuries were not apparent at the time. He indicated that appellant was in the performance of duty when he sustained his injury.

By decision dated September 28, 2011, OWCP denied the claim on the basis that the medical evidence failed to establish a causal relationship between the diagnosed conditions and the implicated employment factors.

On October 27, 2011 appellant requested an oral hearing before an OWCP hearing representative, which was held *via* telephone on February 14, 2012. He provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

Appellant submitted a March 8, 2012 report from Dr. John Hache, a Board-certified anesthesiologist, who diagnosed cervical radiculopathy, cervical spinal stenosis, displacement of cervical intervertebral disc without myelopathy and carpal tunnel syndrome. Dr. Hache indicated that appellant was injured in 1998 when a tree fell on him while he was working as a firefighter and the pain in his neck and right arm worsened in 2004 with no inciting event to trigger this increased pain. On March 16 and April 13, 2012 he administered C7-T1 cervical epidural steroid injections.

By decision dated May 7, 2012, OWCP's hearing representative affirmed the September 28, 2011 decision.

On June 21, 2012 appellant requested reconsideration and submitted a traumatic injury claim (Form CA-1) dated August 20, 1998 alleging that he sustained injuries to his neck, back and right arm due to a sky crane dropping a load of water and causing dead trees to fall on top of him.

By decision dated July 30, 2012, OWCP denied modification of the May 7, 2012 decision.

On October 29, 2012 appellant requested reconsideration and submitted a May 4, 2012 report from Dr. Hache who reiterated his diagnoses and opinions and a June 5, 2012 MRI scan of the cervical spine which revealed C5-6 and C6-7 disc protrusions and mild-to-moderate bilateral neural foraminal narrowing. Appellant also submitted a May 30, 2012 report from Dr. Daniel A. Lazar, a Board-certified neurosurgeon, who diagnosed chronic neck pain and symptoms consistent with a right cervical radiculopathy. Dr. Lazar indicated that appellant injured his neck while working as a firefighter in 1998 when a tree top fell on his head. On September 26, 2012 he stated that appellant continued to suffer from neck pain radiating to his right scapula as well as some paresthesias down his right arm. Dr. Lazar diagnosed C6 radiculopathy in the setting of some chronic neck pain secondary to the C5-6 spondylotic changes. He reviewed appellant's history and opined that his condition and surgical needs were a direct consequence of his injury in 1998.

By decision dated January 24, 2013, OWCP denied modification of its July 30, 2012 decision. It noted that appellant's 1998 traumatic injury claim under OWCP File No. xxxxxx169 was accepted for thoracic sprain.

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 In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, then 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.³

A claimant bears the burden of proof to establish her claim for a consequential injury. As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁴ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁵ Rationalized medical evidence is evidence which relates a work incident, work injury or factors of employment to a claimant's condition, with stated reasons of a physician.⁶ The opinion of the physician 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 injury.⁷

ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant filed a claim for an occupational disease attributing his cervical and right arm conditions to an August 18, 1998 employment injury which was accepted for thoracic sprain. He alleged that his traumatic injury from being hit with a tree top resulted in a thoracic condition which later led to a cervical condition radiating down to his right arm. Appellant has submitted medical documentation with a consistent history of injury and medical opinion that this was the mechanism of injury. In its January 24, 2013 decision, OWCP noted that he had an accepted thoracic condition under File No. xxxxxx169. However, it did not subsequently develop the claim as a consequential injury finding only that the evidence submitted was not sufficient to establish causal relationship. This finding is not in accordance with Board precedent regarding

² See *Albert F. Ranieri*, 55 ECAB 598, 602 (2004); A. Larson, *The Law of Workers' Compensation* § 10.01 (2000).

³ See *Charles W. Downey*, 54 ECAB 421-23 (2003).

⁴ *Id.*

⁵ See *Steven S. Saleh*, 55 ECAB 169, 172 (2003).

⁶ See *supra* note 3.

⁷ *Id.*

consideration of consequential injuries.⁸ The Board finds that OWCP failed to recognize that appellant was attempting to make a consequential injury claim and did not properly combine, or request combination of, the present case record with the record of the originally accepted employment injury which appellant implicated as the initial causative entity.⁹

Consequently, the case will be remanded for OWCP to double this case file with File No. xxxxxx169 and further develop appellant's claim as a consequential injury. OWCP shall prepare a statement of accepted facts and refer appellant for examination by an appropriate physician to determine whether he sustained cervical and right arm conditions as a consequence of his accepted thoracic condition. Following this and such other development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision and requires further development of the evidence and evaluation by OWCP for a possible consequential injury.

⁸ See *J.K.*, Docket No. 09-859 (issued October 20, 2009) (where the Board found that appellant's traumatic injury claim attributing left arm fractures to the collapse of her right knee should have been developed and adjudicated by OWCP as a possible consequential injury of her accepted right knee contusion).

⁹ See *Easter I. Shepherd*, Docket No. 95-1386 (issued March 26, 1997).

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2013 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: September 17, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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