United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 14-761**
	)	**Issued: July 29, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Villa Park, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 11, 2014 appellant, through her attorney, filed a timely appeal from a December 18, 2013 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.

ISSUE

The issue is whether appellant has established a cervical lymphadenopathy as a consequence of her August 13, 2008 employment injury.

FACTUAL HISTORY

On August 20, 2008 appellant, then a 48-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right shoulder injury in the performance of duty on August 13, 2008. She stated that she was attempting to catch a gurney as it fell and injured her right shoulder. On October 31, 2008 OWCP accepted the claim for right shoulder and upper arm sprain.

[1] 5 U.S.C. § 8101 *et seq.*

Appellant underwent right shoulder surgery on July 7, 2009 and stopped working. In a report of that date, Dr. Christos Giannoulias, a Board-certified orthopedic surgeon, described the procedure as right shoulder extensive glenohumeral arthroscopic, subacromial decompression and distal clavicle excision. On July 20, 2009 OWCP accepted the claim for right shoulder bursae and tendon disorder. Appellant underwent additional right shoulder surgery on September 25, 2009.

The record indicates that appellant received treatment for shoulder pain from Dr. Suneela Harsoor, a Board-certified anesthesiologist. In a report dated January 8, 2010, Dr. Harsoor indicated that appellant had developed pain in the right scalene muscles in her neck. By report dated April 9, 2010, he indicated that appellant had received a botulinum toxin (botox) injection in the scalene muscle area. In a report dated June 16, 2010, Dr. Cory Harrow, Board-certified in emergency medicine, indicated that appellant had a manipulation under anesthesia (MUA) for the right and left shoulder joints. Appellant also underwent an MUA on April 19, 2011.

In a report dated October 12, 2011, Dr. Giannoulias stated that appellant had developed chronically-inflamed cervical lymph nodes. He opined that, within a reasonable degree of medical certainty, the condition was directly related to the August 13, 2008 shoulder injury and subsequent shoulder surgeries. Dr. Giannoulias stated that it was necessary to remove the swollen lymph nodes surgically.

OWCP referred the case to an OWCP medical adviser, Dr. Sanjai Shukla, for a report regarding the claimed consequential injury. In a report dated November 13, 2011, Dr. Shukla stated that appellant had adhesive capsulitis that required MUA. He stated that he was not aware of any link between inflamed lymph nodes and adhesive capsulitis, and orthopedic textbooks did not list lymphadenopathy as a concurrent condition with adhesive capsulitis.

In a report dated December 15, 2011, Dr. Giannoulias stated that he had reviewed Dr. Shukla's report. He stated that appellant had two surgeries and had undergone scalene blocks "right where the lymph nodes have been chronically inflamed." Dr. Giannoulias opined that the "scalene blocks [appellant] had secondary to her shoulder surgery in addition to the adhesive capsulitis has chronically inflamed these lymph nodes and that necessitated further surgical treatment to alleviate her condition."

OWCP again referred the case to another OWCP medical adviser for an opinion as to a consequential injury. In a report dated October 15, 2012, Dr. David Garelick reported that the statements from Dr. Giannoulias were not supported by the medical literature. He stated that he did not find cervical lymphadenopathy mentioned as a complication of interscalene blocks anywhere in the medical literature. Dr. Giannoulias noted that there was no evidence of a postsurgery infection and stated that he agreed with Dr. Shukla that the lymph condition was not related to the employment injury.

By decision dated May 17, 2013, OWCP denied expansion of the claim to include cervical lymphadenopathy as a consequential injury. Appellant requested a hearing before an OWCP hearing representative, which was held on October 30, 2013. At the hearing, he submitted a June 8, 2013 report from Dr. Giannoulias, who indicated that he had reviewed OWCP medical adviser's report. Dr. Giannoulias stated, "[L]ymphadenopathy can occur (1) after shoulder surgery or (2) scalene blocks, sometimes trauma to the lymph nodes from the scalene blocks or lymph drainage from the shoulder surgery can occur. There is a direct

relationship here and this is closely related as the shoulder drains in the supraclavicular lymph nodes and the supraclavicular lymph nodes can be injured with scalene blocks." He stated that appellant did not have a history of any other trauma to the shoulder and nothing else "would medically explain this."

By decision dated December 18, 2013, the hearing representative affirmed the May 17, 2013 decision. The hearing representative found that the weight of the medical evidence rested with the medical advisers.

LEGAL PRECEDENT

With respect to consequential injuries, 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] 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.[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 an opinion of reasonable medical certainty and be supported by sound medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.[5]

Section 8123(a) of FECA provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.[6] When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an referee specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.[7]

ANALYSIS

A review of the evidence establishes that a disagreement exists between the attending physician, Dr. Giannoulias, and the medical advisers. Dr. Giannoulias performed the shoulder surgeries in the case and provided a rationalized medical opinion that the diagnosed cervical lymphadenopathy developed as a consequence of the shoulder surgeries and subsequent treatment for appellant's employment-related shoulder condition. He stated that

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

[3] *See* A. Larson, *The Law of Workers' Compensation* § 10.01 (November 2000).

[4] *J.A.*, Docket No. 12-603 (issued October 10, 2012).

[5] *Id.*

[6] *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

[7] *William C. Bush*, 40 ECAB 1064 (1989).

lymphadenopathy can occur after shoulder surgery and noted that the nerve blocks injected into the scalene muscle area were near the affected lymph nodes.

On the other hand, the medical advisers opined that there was no relationship between the diagnosed condition and the surgery or scalene blocks, stating that the medical literature did not disclose such a relationship and there was no evidence of an infection. The Board finds that there is a conflict in the medical evidence that must be resolved in accord with 5 U.S.C. § 8123(a). As noted above, when there are opposing reports of virtually equal probative value, the case must be remanded for a referee examination. The case will be remanded for resolution of the conflict. After such further development as OWCP deems necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds that a conflict in the medical evidence exists and the case is remanded for proper resolution of the conflict.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 18, 2013 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: July 29, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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