



## **FACTUAL HISTORY**

On March 5, 2005 appellant, then a 55-year-old nurse, filed a traumatic injury claim alleging that on February 28, 2005 she suffered a dislocation of T3, T4, and T5 when assisting to control a psychotic patient. On March 31, 2005 OWCP accepted appellant's claim for sprain/strain, lumbosacral joint ligament. On July 6, 2012 OWCP expanded the list of accepted conditions to include sprain of lumbar and thoracic region of back and closed dislocation of lumbar and thoracic vertebra.

Appellant began her treatment with Dr. Les Benson, a Board-certified neurologist, on July 18, 2013. Dr. Benson diagnosed appellant with lumbar IVD, radiculopathy, closed dislocation lumbar vertebra, closed dislocation thoracic vertebra, lumbar sprain, and thoracic sprain. He referred appellant for rehabilitation therapy and a new magnetic resonance imaging (MRI) scan of the right lumbar spine.

In an August 27, 2013 imaging report, Dr. Kathleen A. Sorensen, a Board-certified radiologist, found spondylitic changes of the lumbar spine with mild narrowing of the canal at T11-12 and L4-5 and mild foraminal narrowing at multiple levels. She also found a left adrenal lesion.

In a September 13, 2013 letter, Dr. Benson stated that appellant had been evaluated for closed dislocation lumbar vertebra, closed dislocation thoracic vertebra, lumbar sprain, and thoracic sprain. He opined that appellant's diagnosis should be upgraded to include lumbar IVD and radiculopathy, which were directly related to the accepted conditions. Dr. Benson noted that an MRI scan was performed over a year ago which reported that she exhibited IVD. He also noted that appellant had an electromyogram study on August 5, 2013. Dr. Benson also submitted electrodiagnostic results from an examination done by Dr. Jonathan Walker, a Board-certified neurologist, on August 5, 2013. Dr. Walker determined that appellant's nerve conduction velocity electromyography evinced abnormal amplitudes and velocities of the Peroneal motor bilaterally along with abnormal electromyography findings suggestive of a possible compressive nerve root irritation at the L5 level bilaterally, which is consistent with a radiculopathy.

By letter dated October 10, 2013, appellant's counsel requested that OWCP expand her claim to include the conditions of lumbar IVD and radiculopathy.

On October 24, 2013 OWCP referred appellant's case to an OWCP medical adviser. In an October 24, 2013 report, OWCP medical adviser noted that there was a significant gap in the records regarding treatment of appellant's condition from 2005 to 2012. He noted that the initial accepted diagnoses under this claim in 2005 did not include conditions involving degeneration or displacement of lumbar discs or radiculopathy, despite findings of disc degeneration and protrusion on the MRI scan of 2005. OWCP medical adviser noted that this is correct as such conditions existed prior to the employment-related incident and were, more likely than not, the result of the aging process rather than trauma. Likewise, he opined that the findings noted by Dr. Benson on his most recent studies are again more consistent with the aging process than the injury of February 28, 2005, as it is consistent with the natural history of these degenerative processes over the course of several years. Accordingly, OWCP medical adviser suggested that appellant's claim not be upgraded to include the diagnoses proposed by Dr. Benson.

By decision dated October 29, 2013, OWCP denied appellant's claim for a consequential injury.

In a February 6, 2014 response to OWCP medical adviser's report, Dr. Benson disagreed with the assessment made by OWCP medical adviser. He noted that, although appellant quite likely has conditions that are degenerative in nature, her conditions, whether degenerative or not, were aggravated by the work injury, which would qualify them to be accepted by OWCP. Dr. Benson noted that appellant did not experience these symptoms leading up to the incident, and the diagnostic studies confirm his findings. He therefore opined that based on her objective findings, it was his medical opinion with reasonable medical certainty that appellant's IVD and radiculopathy were, at the very least, exacerbated as a direct result of the employment injury that occurred on February 28, 2005. In a February 14, 2014 report, Dr. Benson noted that the kind of trauma appellant experienced made her accepted conditions worse, and that her OWCP claim should be upgraded to included IVD and radiculopathy or radiculitis.

By letter dated February 18, 2014, appellant, through counsel, requested reconsideration. Counsel argued that OWCP medical adviser's opinion was not valid, that he did not explain why he believed appellant's medical conditions were degenerative, that at most his opinion of OWCP medical adviser created a conflict in the medical evidence which required referring appellant's case to an impartial medical examiner, that Dr. Benson explained why appellant's accepted conditions should be upgraded, and that consequential injuries should be included as accepted conditions.

On March 28, 2014 OWCP referred appellant to Dr. Robert D. Harper, a Board-certified orthopedic surgeon, for a second opinion. In a March 28, 2014 opinion, Dr. Harper noted that the MRI scan of the spine conducted on April 8, 2005 showed diffused degenerative discs, moderate left foraminal stenosis at L3-4, mild central disc protrusion at L5-S1, and mild annular bulge at T11-12. He opined that the diffuse degenerative discs and the moderate left foraminal stenosis at L3-4 preexisted the injury as the time between the injury and the work-related injury was inadequate for the described changes to be caused by the injury. Dr. Harper noted that appellant has chronic lower back pain with degenerative changes, paraspinous tenderness in thoracic and lumbar spine, restricted lumbar motion, positive seated and supine straight leg raises, and diminished sensation in the left lower extremity. He concluded that, based on the somewhat conflicting information, the natural history of spine problems and reasonable medical probability, the employment-related injury of February 28, 2005 resolved on or before 2007. Dr. Harper opined that, while the findings indicate that appellant's condition is not resolved and still active causing disability, there is insufficient information/evidence to conclude that the injury of February 28, 2005 produced, aggravated, or precipitated the current situation/condition/recurrence.

By decision dated May 6, 2014, OWCP denied modification of its October 29, 2013 decision.

### **LEGAL PRECEDENT**

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 occurrence 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.<sup>2</sup> The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.<sup>3</sup> 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.<sup>4</sup> A claimant bears the burden of proof to establish the claim for consequential injury.<sup>5</sup>

Causal relationship is a medical issue,<sup>6</sup> and the medical evidence generally required to establish causal relationship is rationale medical opinion evidence. The opinion of the physician must be based on a complete factual and medical history of the claimant,<sup>7</sup> must be one of reasonable certainty,<sup>8</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>9</sup>

### ANALYSIS

OWCP accepted appellant's claim for sprain/strain of the lumbosacral joint ligament, sprain of the lumbar and thoracic regions of the back, and closed dislocation of lumbar thoracic vertebra. Appellant, through counsel, asked that her claim be expanded to include diagnoses of lumbar IVD and radiculopathy. OWCP denied her claim for a consequential injury.

The Board finds that appellant has not met her burden of proof to establish that the conditions of lumbar IVD and radiculopathy were a consequence of the February 28, 2005 employment injuries. The only evidence offered in support of expansion of appellant's claim is the reports by Dr. Benson. Although Dr. Benson opined that appellant's IVD and radiculopathy were, at the very least, exacerbated by her employment injury, she does not provide a rationalized medical opinion that supports this conclusion. The Board has found that medical conclusions unsupported by rationale are of little probative value.<sup>10</sup> Although Dr. Benson's reports establish that appellant has IVD and radiculopathy, she does not provide an explanation or any diagnostic tests or examinations that explain the relationship of the conditions to her

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<sup>2</sup> *Albert F. Ranieri*, 55 ECAB 598 (2004).

<sup>3</sup> *Id.*; *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

<sup>4</sup> *Kathy A. Kelley*, 55 ECAB 206 (2004); *see also C.S.*, Docket No. 11-1875 (issued August 27, 2012).

<sup>5</sup> *S.P.*, Docket No. 14-900 (issued August 8, 2014).

<sup>6</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>7</sup> *William Nimitz, Jr.*, 30 ECAB 567 (1979).

<sup>8</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>9</sup> *See William Enright*, 31 ECAB 426, 430 (1980).

<sup>10</sup> *M.P.*, Docket No. 14-1289 (issued September 26, 2014).

employment or the accepted conditions. The fact that appellant now experiences IVD and radiculopathy does not necessarily mean that it was related to her accepted conditions. Furthermore, the fact that appellant was asymptomatic prior to her employment injury is not a sufficient rationalization. Finally, the Board notes that there is no evidence of any bridging symptoms linking appellant's IVD and radiculopathy to the accepted conditions.<sup>11</sup>

None of the remaining medical reports provide any support for appellant's request to expand the claim. Neither Dr. Walker nor Dr. Sorensen addresses causal relationship. OWCP medical adviser suggested that the evidence was not sufficient to upgrade appellant's claim to include the conditions of IVD and radiculopathy, as suggested by Dr. Benson. He noted that Dr. Benson's findings were consistent with the aging process. Dr. Harper also does not link appellant's IVD and radiculopathy to her accepted conditions. Accordingly, appellant has not submitted medical evidence sufficient to establish that her diagnosed conditions of IVD and radiculopathy were a consequence of the February 28, 2005 employment injuries.

The Board notes that appellant's counsel correctly contends that OWCP improperly referred to Dr. Harper as a referee physician. The Board finds that this is harmless error as the referral referenced the doctor as a second opinion physician and, as found above, appellant did not meet her burden of proof to provide rationalized medical evidence in support of her claim that her IVD and radiculopathy were a consequence of her accepted conditions. Thus, counsel's contention is without merit.

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 did not establish that she sustained lumbar IVD and radiculopathy as a consequence of her accepted injuries.

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<sup>11</sup> *L.M.*, Docket No. 13-855 (issued September 12, 2013); Docket No. 10-2044 (issued August 22, 2011).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 6, 2014 is affirmed.

Issued: February 18, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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