United States Department of Labor
Employees' Compensation Appeals Board

H.W., Appellant	)	
and	)	**Docket No. 16-1060**
	)	**Issued: December 7, 2016**
DEPARTMENT OF THE ARMY, RED RIVER ARMY DEPOT, Texarkana, TX, Employer	)	

Appearances:
Michael E. Woods, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 25, 2016 appellant, through his representative, filed a timely appeal of a January 28, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained a left shoulder rotator cuff tear and lumbar radiculopathy causally related to his accepted March 14, 1989 employment injury.

On appeal appellant's representative contends that appellant has met his burden to establish that his left shoulder and lumbar conditions were consequentially related to the accepted injury.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances set forth in the prior decision is incorporated herein by reference. The facts relevant to this appeal are as follows.

On March 15, 1989 appellant, then a 41-year-old metal processor/light item handler, filed a traumatic injury claim (Form CA-1) alleging that he injured his left shoulder when he tripped and fell on March 14, 1989 in the performance of duty. OWCP accepted the claim for left shoulder contusion and cervical and lumbar strains and authorized C5-6 an anterior cervical discectomy surgery, which occurred on July 12, 1989. Appellant received wage-loss compensation benefits on the periodic rolls commencing June 16, 2002.

On October 31, 1989 appellant filed a traumatic injury claim (Form CA-1) alleging that, on October 25, 1989, he reinjured himself when a chair he was sitting in tilted backward as he was trying to stand up.[4] OWCP accepted the claim for neck sprain and cervical spondylosis.[5]

In progress notes dated May 30, 1990, Dr. Greg Smolarz, a Board-certified orthopedic surgeon, noted that based on an x-ray evaluation there were no left shoulder abnormalities.

An April 4, 1991 magnetic resonance imaging (MRI) scan revealed a left L4-5 paracentral disc herniation.

On May 7, 1991 Dr. Contreras diagnosed C6-7 and L4-5 herniated discs based on a review of a myelogram. He also noted that appellant had no interest in surgery.

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[3] By decision dated July 14, 2009, the Board affirmed a February 5, 2008 OWCP decision which denied reconsideration of prior OWCP decisions granting appellant a schedule award for 25 percent permanent impairment of the left lower extremity. Docket No. 08-1692 (issued July 14, 2009). On August 30 2010 appellant, through his representation, filed a request for review of an OWCP decision dated November 24, 2010. By order dated June 2, 2011, the Board granted appellant's representative's request to dismiss the appeal to the Board. Docket No. 11-0917 (issued June 2, 2011).

[4] This claim was assigned OWCP File No. xxxxxx951. On May 3, 1990 OWCP combined OWCP File Nos. xxxxxx427 and xxxxx951 with the former serving as the master file number.

[5] The employing establishment terminated appellant's employment effective July 19, 1990.

In reports dated April 3 and June 8, 1992, and April 19, 1993, Dr. R. Paul Tucker, a Board-certified neurologist, found no evidence of a left shoulder rotator cuff tear based on review of the April 4, 1991 MRI scan.

In various reports from November 14, 1996 to November 28, 2000, Dr. Tucker noted that a November 8, 1996 MRI scan revealed a right and central large L4-5 disc fragment.

In a report dated April 24, 1997, Dr. Barry M. Green, a Board-certified orthopedic surgeon, diagnosed a large protruding L3-5 disc based on review of a July 8, 1996 MRI scan and a normal left shoulder upon review of the MRI scan.

On July 12, 2004 appellant returned to a limited-duty job working 32 hours per week as a motor vehicle operator.

In attending physician's reports (Forms CA-20) dated August 1 and 27, 2004, Dr. Tucker diagnosed left cervical C6-7 disc disease with stenosis and right lumbar L4-5 disc disease "presumably related to" the March 14, 1989 work injury.

By decision dated September 13, 2004, OWCP issued a loss of wage-earning capacity determination, reducing his entitlement to compensation based on his actual wages as a motor vehicle operator.

In an October 11, 2004 report, Dr. Tucker noted that a myelogram performed in 2002 showed chronic left L2-4 and right L5 neurogenic changes and no evidence of peripheral neuropathy.

In an August 30, 2005 report, Dr. Charles Schultz, a Board-certified neurologist, noted that appellant was referred by Dr. Tucker for an evaluation of his chronic pain. He provided a history of appellant's complaints and physical examination findings. Diagnoses included chronic C5-6 radiculopathy, cervical and lumbar spondylosis without myelopathy, L2-4 and right L5 chronic radiculopathy, chronic tension headaches, osteoarthritis, hypertension, and muscle cramps with muscle spasms.

On January 12, 2006 appellant filed a traumatic injury claim (Form CA-1) alleging that on January 4, 2006 he injured his neck when a forklift backed into the rear of his motor vehicle. OWCP accepted the claim for neck sprain.[6] Appellant stopped work on January 4, 2006 and returned to work for four hours per day beginning May 22, 2007. He retired from the employing establishment, effective August 12, 2010.

In an August 10, 2010 report, Dr. William L. Rutledge, a family practitioner, noted that he reviewed appellant's medical records from 2002 to March 2010. He related appellant's history of injury and provided examination findings. Dr. Rutledge opined that appellant's work condition had worsened and he was disabled from performing his date-of-injury job. He noted that appellant's cervical and lumbar disc diseases with stenosis were progressive diseases and

[6] This claim was assigned OWCP File No. xxxxxx095. On May 12, 2008 OWCP combined File Nos. xxxxxx427 and xxxxxx095 with the former severing as the master file number.

that his condition had worsened to include depression from chronic pain, muscular atrophy, and weakness.

On April 11, 2014 appellant underwent MRI scans of the left shoulder and cervical and lumbar areas of the spine as well as x-ray interpretation of the lumbar spine. The lumbar MRI scan and x-ray scan showed no evidence of instability or loss of disc space in the lumbar spine. The left shoulder MRI scan evinced impingement and a partial thickness rotator cuff tear.

On May 19, 2014 appellant underwent a cervical electromyography/nerve conduction velocity (EMG/NCV) study performed by Dr. Patrick Donovan, a Board-certified physiatrist. Based on test results, Dr. Donovan diagnosed acute and chronic C5-6 cervical radiculopathy and mild left carpal tunnel syndrome.

A June 3, 2014 lumbar EMG/NCV study was performed by Dr. Donovan. Test results were positive for acute and chronic bilateral L5 lumbosacral radiculopathy.

In a June 3, 2014 report, Dr. Donovan noted that appellant was involved in a March 14, 1989 lifting injury at work. He further noted that since the injury appellant had developed progressive neck and lower back pain and increased bilateral upper and lower extremity paresthesias. Physical examination and diagnostic test findings were recorded.

In a letter dated August 11, 2014, appellant requested that OWCP expand his accepted conditions from contusion of the left shoulder and arm, neck, and back sprain, to include left shoulder rotator cuff tear and cervical and lumbar radiculopathy.

In an August 6, 2014 report, Dr. John A. Sazy, an orthopedic surgeon, noted the accepted conditions were cervical and lumbar strains, as well as left arm and shoulder contusions. Appellant reported severe radiating pain and radiating parenthesis into the left shoulder and arm and bilateral thigh posterior parenthesis. He opined that the March 14, 1989 work injury caused more severe injuries than the strains and contusion, which had been accepted. According to Dr. Sazy, the correct diagnoses due to the March 14, 1989 work injury were cervical disc disruption with radiculopathy, lumbar intervertebral disc disease with radiculopathy, and left shoulder partial rotator cuff tear with impingement syndrome.

By correspondence dated August 12, 2014, OWCP informed appellant of the evidence necessary to expand acceptance of his claim to include the conditions of left shoulder rotator cuff tear, lumbar, and cervical radiculopathy. Appellant was afforded 30 days to provide the necessary evidence.

In an October 15, 2014 report, Dr. Sazy reviewed an October 14, 1993 statement of accepted facts (SOAF), a January 7, 2005 addendum, and various diagnostic tests. He noted appellant's medical history and examination findings. Dr. Sazy diagnosed cervical and lumbar stenosis with radiculopathy and left shoulder impingement with partial rotator cuff tear, which he noted were confirmed by MRI scan and EMG tests. He attributed the diagnosed conditions to the March 14, 1989 work injury. In support of this conclusion, Dr. Sazy explained that the exertional forces from the 1989 fall accelerated degenerative anatomical changes. Thus, he reasoned that appellant's degenerative changes were not solely the result of aging and degenerative processes. Dr. Sazy opined that the conditions accepted by OWCP should be

expanded to include cervical and lumbar decreased intervertebral disc with radiculopathy and myelopathy and left shoulder impingement with partial rotator cuff tear.

On December 1, 2014 OWCP received treatment notes covering the period July 19, 2010 to October 13, 2014 from Dr. Roshnan Sharma, a Board-certified physiatrist, concerning treatment for neck and back pain and EMG studies dated November 30 and December 2, 2010. Diagnoses included chronic neck pain, failed neck surgery syndrome, restricted neck range of motion, and chronic low back pain.

On January 5, 2015 OWCP referred the case for review by an OWCP medical adviser including an updated SOAF.

In a January 6, 2015 report, an OWCP medical adviser advised that appellant's lumbar and left shoulder conditions were unrelated to the March 14, 1989 work incident. In support of this conclusion, he noted that the April 11, 2014 left shoulder MRI scan findings were unrelated to a left-sided contusion sustained 25 years ago. The medical adviser also opined that the lumbar abnormalities found on the April 11, 2014 MRI scan were unrelated to the lumbar strain, which he noted would have resolved within six to eight weeks. He noted that Dr. Sazy's reports contained no examination findings or history which would be consistent with spinal stenosis. Based on a review of the cervical MRI scan, the medical adviser recommended acceptance of a consequential displacement of C5-6 and C6-7 intervertebral discs with myelopathy.

By decision dated January 27, 2015, OWCP accepted displacement of C5-6 and C6-7 intervertebral discs with myelopathy as causally related to the accepted March 15, 1989 injury.

On March 2, 2002 appellant was seen by Dr. Jeff Fritz, a Board-certified anesthesiologist, for an impairment rating. Dr. Fritz provided a medical history, injury history, and physical examination findings. He noted that the accepted conditions were left shoulder/arm contusion, cervical disc disease with myelopathy, and neck and lumbar sprains. Dr. Fritz provided an impairment rating for the accepted cervical conditions.

By decision dated March 19, 2015, OWCP denied appellant's request to expand his claim to include left shoulder rotator cuff tear and lumbar radiculopathy. It found Dr. Sazy's opinion insufficiently rationalized, based on lack of explanation regarding the large time gap from the March 14, 1989 work injury to the date appellant was diagnosed with left rotator cuff tear and lumbar radiculopathy.

By letter dated March 26, 2015, appellant's representative requested a telephonic hearing before an OWCP hearing representative, which was held on November 17, 2015.

By decision dated January 28, 2016, an OWCP hearing representative affirmed OWCP's March 19, 2015 decision. The hearing representative found that the medical evidence of record was insufficient to support appellant's contention that he sustained left shoulder rotator cuff tear and lumbar radiculopathy due to or as a consequence of the accepted March 14, 1989 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including that any disability and/or specific condition for which compensation is claimed are causally related to the employment 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] The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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.[9]

ANALYSIS

OWCP accepted that appellant sustained left shoulder contusion and cervical and lumbar strains, and authorized a C5-6 anterior cervical discectomy surgery due to the March 14, 1989 work injury. On January 27, 2015 it expanded acceptance of his claim to include displacement of C5-6 and C6-7 intervertebral discs with myelopathy. By decision dated March 19, 2015, OWCP denied appellant's request to accept left shoulder rotator cuff tear and lumbar radiculopathy as causally related to the accepted injury.

The Board finds that appellant has not met his burden of proof to establish that the conditions of left shoulder rotator cuff tear and lumbar radiculopathy are causally related to the accepted March 14, 1989 employment injury.

Dr. Sazy began treating appellant in 2014. He diagnosed left shoulder impingement with partial rotator cuff tear, as well as lumbar stenosis with radiculopathy. Dr. Sazy contended in his August 6 and October 15, 2014 reports that the March 14, 1989 work injury caused more severe injuries than what was accepted. In the October 15, 2014 report, he explained that the exertional forces from the fall accelerated the degeneration and anatomical changes in appellant's left shoulder as well as his cervical and lumbar spine. Although Dr. Sazy opined that appellant's left shoulder impingement with partial rotator cuff tear and lumbar stenosis with radiculopathy were caused, or at the very least aggravated, by the March 14, 1989 work injury, he hid not provide sufficient medical rationale supporting this conclusion. The Board has found that medical opinions unsupported by rationale are of little probative value.[10] Dr. Sazy failed to explain why

[7] *K.G.,* Docket No. 15-1139 (issued September 28, 2016).

[8] *G.M.*, Docket No. 15-1645 (issued December 7, 2015).

[9] *Victor J. Woodhams,* 41 ECAB 345 (1989).

[10] *M.P.*, Docket No. 14-1289 (issued September 26, 2014); *F.T.*, Docket No. 09-0919 (issued December 7, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

the rotator cuff tear was not seen on appellant's May 30, 1990 x-ray of the left shoulder and was not found by Dr. Tucker and Dr. Smolarz in their reports covering the period 1990 to 1993. He provided no rational as to why this condition was first diagnosed following appellant's April 11, 2014 MRI scan, which showed left shoulder impingement with partial rotator cuff tear. Dr. Sazy's opinion is insufficiently rationalized based on an accurate medical history and therefore his opinion is insufficient to support that the findings on the 2014 MRI scan of appellant's left shoulder arose from the accepted March 14, 2009 employment injury.[11]

Similarly, Dr. Sazy did not explain the lack of a diagnosed lumbar disc condition from the 1989 injury until 1991. An April 4, 1991 MRI scan showed a left L4-5 paracentral disc herniation. Dr. Sazy's report is incomplete as it is not based on a review of the complete medical record and does not establish a causal relationship between appellant's current lumbar and left shoulder conditions and the accepted work injury.[12]

OWCP's medical adviser advised that the left shoulder and lumbar conditions were unrelated to the March 14, 1989 work incident as the left shoulder contusion occurred over 25 years ago and the accepted lumbar strain would have resolved within six to eight weeks. Moreover, he noted that Dr. Sazy's reports provided no examination findings or history consistent with spinal stenosis in his reports. The medical evidence of record showed no left shoulder abnormality until the April 11, 2014 MRI scan and no lumbar disc condition until a November 8, 1996 MRI scan. The Board finds that the opinions expressed by the medical adviser were based on a proper medical history and were well rationalized. As such the report of the district medical adviser is of probative value.[13]

The remaining medical evidence of record is insufficient to satisfy appellant's burden of proof. The reports from Drs. Contreras, Donovan, Fritz, Rutledge, Schultz, Sharma, and Tucker are of diminished probative medical value as none of these reports contained an opinion on the causal relationship between the lumbar and left shoulder conditions and the accepted March 14, 1989 work injury. Reports lacking such an opinion are of diminished probative value.[14] As none of the reports from these physicians provided an opinion as to how these conditions were caused by the accepted March 14, 1989 work injury, they are of diminished probative value and are insufficient to satisfy his burden of proof.

Appellant has not met his burden of proof because the medical opinion evidence in this case is insufficient to establish the critical element of causal relationship between appellant's left shoulder impingement with partial rotator cuff tear, lumbar stenosis with radiculopathy, and the accepted work injury.

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[11] *See V.M.*, Docket No. 15-0601 (issued May 19, 2015).

[12] *L.G.*, Docket No. 09-1692 (issued August 11, 2010); *James R. Taylor*, 56 ECAB 537 (2005) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

[13] *Supra* note 9.

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

On appeal appellant's representative contends that medical evidence submitted establishes appellant's consequential injury claim. 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 likewise arises out of the employment, unless it is the result of an independent intervening cause.[15] An employee who asserts that a nonemployment-related injury was a consequence of a previous employment-related injury has the burden of proof to establish such relationship.[16] The record does not contain rationalized or bridging medical opinion explaining how the diagnosed left shoulder impingement with partial rotator cuff tear and lumbar stenosis with radiculopathy were consequential injuries of the accepted work injury. There is no evidence of record that the accepted employment conditions led to left shoulder impingement with partial rotator cuff tear or lumbar stenosis with radiculopathy. As such appellant has not met his burden of proof to establish a consequential injury.[17]

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 his burden of proof to establish that he sustained a left shoulder rotator cuff tear and lumbar radiculopathy, causally related to his accepted March 14, 1989 employment injury.

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[15] *K.R.*, Docket No. 11-0391 (issued December 21, 2011).

[16] *See G.W.*, Docket No. 11-1985 (issued May 18, 2012).

[17] *Supra* note 15.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 28, 2016 is affirmed.

Issued: December 7, 2016
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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