

ISSUE

The issue is whether appellant has met his burden of proof to establish additional cervical and lumbar conditions as a consequence of his accepted August 31, 2013 employment injuries.

FACTUAL HISTORY

On August 31, 2013 appellant, then a 40-year-old city carrier, filed a traumatic injury claim (Form CA-1) for injuries received as a result of a motor vehicle accident while delivering mail. He claimed a neck sprain, sprain of the back, lumbar region, left knee and left leg sprain of unspecified sites, and left hip and left thigh sprain of unspecified sites. Appellant stopped work on the date of injury and has not returned to work.

In a September 9, 2013 report, Dr. Anthony Melillo, a Board-certified orthopedic surgeon, noted the history of the August 31, 2013 motor vehicle accident and that appellant had been seen at an emergency room. He noted findings which included full motion of the left knee with no instability, and normal motion of the left hip with no grinding. Dr. Melillo reported reviewing left knee, left hip, pelvis, and cervical spine x-rays which were negative. Appellant was intact neurologically. Dr. Melillo assessed mild left knee sprain and a left hip sprain due to the work injury. He recommended physical therapy. Dr. Melillo noted that appellant should not work until his next visit.

Thereafter, appellant sought treatment from Dr. Louis Train, a family practitioner. On September 26, 2013 Dr. Train noted the history of the work injury and reported findings that included neck muscle spasms, decreased pinprick sensations in the median and ulnar nerves, decreased bilateral shoulder motion, decreased grip strength in the forearms, positive straight leg raising at 90 degrees bilaterally, and left patella crepitus and tenderness. He diagnosed neck sprain with thoracic outlet syndrome triggered by sprained neck muscles, low back sprain, left knee sprain, and left hip/thigh sprain. Dr. Train concluded that "in my medical rationale," appellant's diagnosed conditions were due to the work-related motor vehicle accident. He opined that appellant could not work as a postal carrier.

On October 17, 2013 OWCP accepted sprains of the neck, back (lumbar region), left knee, leg, hip, and thigh. Appellant received continuation of pay beginning September 1, 2013. He was placed on the periodic rolls effective October 16, 2013.

By letter dated January 29, 2014, OWCP referred appellant, together with a statement of accepted facts, a list of questions, and the medical record, to Dr. James F. Hood, a Board-certified orthopedic surgeon, for a second opinion to determine whether he had any residuals from his accepted conditions and to determine if he had continued disability. In a February 19, 2014 medical report, Dr. Hood provided a history of the August 31, 2013 employment injuries and appellant's medical treatment. He noted appellant's complaints of neck, back, right hip, and right knee pain. Dr. Hood reported findings on examination of the lumbar and cervical spines, and left knee. He diagnosed left knee contusion with no evidence of any internal derangement, hip sprain/contusion, and soft tissue sprain of the lumbar and cervical spine without radiculopathy. Dr. Hood advised that appellant's subjective complaints were no longer related to the accepted employment injuries. He opined that there was secondary gain and symptom magnification. Dr. Hood concluded that although appellant could not return to his city carrier

position due to his medications, he could return to full-duty work eight hours a day with no restrictions.

In a March 12, 2014 report, Dr. Train noted appellant's complaints of neck and low back pain. He reported findings on examination of the neck, lower back, and left knee. Dr. Train diagnosed cervical herniated nucleus pulposus and lumbar herniated nucleus pulposus with left sciatica. Based on magnetic resonance imaging (MRI) scan results, appellant's history and physical findings, he requested that his accepted injuries be upgraded to include cervical herniated nucleus pulposus.

On March 28, 2014 OWCP requested that Dr. Hood review additional medical evidence of record and provide an opinion as to whether appellant's current cervical condition was causally related to the accepted work injuries and whether he had continued disability. In a supplemental report dated April 9, 2014, Dr. Hood reviewed the additional medical evidence and reiterated his prior diagnoses of left knee contusion with no evidence of any internal derangement, hip sprain/contusion, and soft tissue sprain of the lumbar and cervical spine without radiculopathy. He advised that appellant's current cervical condition was no longer medically connected to his accepted August 31, 2013 employment injuries as there were no objective findings to correlate with his subjective complaints. Dr. Hood concluded that he could return to his city carrier position after he was off all prescribed medications.

In an April 9, 2014 report, Dr. Train again provided appellant's history. Appellant complained about constant low back pain that radiated down his left leg. Dr. Train reported physical examination findings. He also reported that a February 24, 2014 cervical MRI scan showed C3-4 disc herniation, three to four millimeters that caused flattening of the thecal sac. Electromyogram/nerve conduction (EMG/NC) studies dated March 8, 2014 showed L5-S1 radiculopathy on the left. A March 17, 2014 lumbar MRI scan showed L5-S1 disc herniation, four to five millimeters. Dr. Train noted the accepted conditions and advised that appellant's claim was not limited to a lumbar sprain/strain based on his examination findings, and MRI scan and EMG/NC results. He requested that the new diagnoses be included in appellant's claim. Dr. Train reasoned that these conditions were a direct result of his work-related injuries. He ordered a functional capacity examination and advised that appellant could not perform any sedentary work or stand, push, or pull.

On May 6, 2014 OWCP found a conflict in medical opinion between Drs. Train and Hood regarding appellant's work capacity. By letter dated May 14, 2014, it referred him, together with a statement of accepted facts, a list of questions, and the medical record, to Dr. Grant R. McKeever, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a June 4, 2014 report, Dr. McKeever reviewed appellant's history and medical record. He noted appellant's complaint of intermittent pain in his back, cervical spine, and left leg, and reported examination findings. Dr. McKeever opined that appellant's accepted employment-related conditions had resolved based on his examination findings. These conditions had resolved within eight weeks post injury and ceased to be a factor. Dr. McKeever concluded that appellant could return to his city carrier position with no restrictions. He also concluded that no further medical treatment was necessary as the compensable injuries had long resolved.

In a November 12, 2014 report, Dr. Train provided appellant's history and findings on examination. He again noted the February 24 and March 17, 2014 cervical and lumbar MRI scan and March 8, 2014 EMG/NC results. Dr. Train reported that a December 9, 2013 left knee MRI scan showed mild patellar tendinosis. A May 20, 2014 functional capacity evaluation showed appellant's work restrictions.⁴ Dr. Train again advised that appellant's claim was not limited to a lumbar sprain/strain. He requested that his claim be upgraded to include the diagnoses of cervical and lumbar disc displacement, and reactive depression. Dr. Train reasoned that these conditions were a direct result of appellant's August 31, 2013 employment injuries.

On March 16, 2015 an OWCP medical adviser reviewed a statement of accepted facts and the medical record, including Dr. Train's April 9 and November 12, 2014 reports, to determine whether appellant's claim should be upgraded to include cervical and lumbar disc displacement, and reactive depression. He noted Dr. McKeever's opinion that appellant's employment-related injuries had resolved. The medical adviser related that he was unable to find an acceptable causation analysis explaining the relationship of the disc pathology in the cervical and lumbar spines to the August 31, 2013 traumatic work event. Therefore, he opined that the diagnoses of cervical and lumbar disc displacement were likely unrelated to the August 31, 2013 traumatic work event and more likely the result of degenerative spinal conditions. The medical adviser concluded that, based on the above reasons, he could not support a consequential injury in appellant's claim to include cervical and lumbar disc displacement. He, however, recommended that his claim be upgraded to include the diagnosis of reactive depression as proposed by Dr. Train. The medical adviser reasoned that it appeared appellant's chronic pain complaints persisted and they were consistent with this condition.

In an April 1, 2015 decision, OWCP found that the medical evidence of record was insufficient to establish that appellant sustained cervical and lumbar disc displacement as a consequence of his accepted August 31, 2013 work injuries. However, it accepted his claim for chronic pain syndrome. OWCP found that further medical development was necessary to determine whether appellant had reactive depression due to his accepted work injuries.

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.⁵ 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.⁶

⁴ The Board notes that the May 20, 2014 EMG/NC results are not contained in the case record.

⁵ See *Albert F. Ranieri*, 55 ECAB 598 (2004); A. Larson, *The Law of Workers' Compensation* § 10.01 (November 2000).

⁶ See *Charles W. Downey*, 54 ECAB 421-23 (2003).

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence.⁷ 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.⁸ 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.⁹

ANALYSIS

OWCP accepted that on August 31, 2013 appellant sustained a neck sprain, sprain of the back, lumbar region, left knee and left leg sprain of unspecified sites, left hip and left thigh sprain of unspecified sites, and chronic pain syndrome while in the performance of duty. Appellant claimed that he sustained additional neck and lumbar injuries, including cervical and lumbar disc displacement as a consequence of his accepted neck, back, and left knee, left leg, left hip, and left thigh conditions. He bears the burden of proof to establish his claim for a consequential injury.¹⁰ The Board finds that appellant has not submitted sufficient medical evidence to establish his additional neck and back conditions as a consequence of his accepted employment injuries.

Dr. Train failed to relate how the accepted neck, back, left knee, left leg, left hip, left thigh, and chronic pain conditions caused the additional cervical and lumbar conditions. On April 9 and November 12, 2014 he briefly addressed causal relationship by opining that appellant's L5-S1 radiculopathy on the left, C3-4 and L5-S1 disc herniation, cervical disc displacement, and lumbar disc displacement (sciatica) were a direct result of the accepted work-related injuries. However, Dr. Train failed to explain the mechanism of injury by detailing how this motor vehicle accident caused the diagnosed conditions. A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹¹ The Board finds, therefore, that Dr. Train's reports are insufficient to meet appellant's burden of proof.

The Board notes that it is appellant's burden of proof and finds insufficient rationalized medical evidence of record to establish that appellant's cervical and lumbar conditions were a consequence of his accepted employment injuries. Appellant did not meet his burden of proof to establish a consequential injury. Moreover, an OWCP medical adviser reviewed the medical record and related that he could not recommend the expansion of appellant's claim to include consequential cervical and lumbar disc displacement. He reasoned that there was no acceptable causation analysis explaining the relationship between the disc pathology in the cervical and lumbar spines and the accepted August 31, 2013 employment incident. The medical adviser

⁷ *J.A.*, Docket No. 12-603 (issued October 10, 2012).

⁸ *See supra* note 6.

⁹ *Id.*

¹⁰ *Supra* note 7.

¹¹ *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

further reasoned that these conditions were more likely the result of degenerative spinal conditions and not the accepted work incident. Furthermore, Dr. Hood, an OWCP referral physician, and Dr. McKeever, an impartial specialist, found no basis on which to attribute additional conditions to the August 31, 2013 work injury.¹² Dr. Hood reported that there were no objective findings to correlate his subjective complaints, while Dr. McKeever concluded that the accepted orthopedic conditions had resolved, thus negating further medical treatment.

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 additional cervical and lumbar conditions as a consequence of his accepted August 31, 2013 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹² The Board notes that Dr. McKeever was an impartial specialist with regard to appellant's work capacity and not with regard to whether additional conditions should be accepted. However, his report may still be considered for its own intrinsic value. See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).