United States Department of Labor
Employees' Compensation Appeals Board

M.A., Appellant	)	
and	)	**Docket No. 15-1956**
	)	**Issued: February 3, 2017**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Hilo, HI, Employer	)	

Appearances:
Andy T. Ahuna-Alofaituli, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 25, 2015 appellant, through her representative, filed a timely appeal from an August 20, 2015 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 over the merits of this case.[3]

[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.*

[3] Appellant submitted additional medical evidence after OWCP rendered its August 20, 2015 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant met her burden of proof to establish that her left shoulder condition was causally related to her accepted November 8, 2012 employment injury.

FACTUAL HISTORY

On November 9, 2012 appellant, then a 35-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on November 8, 2012 she lifted a heavy bag onto the conveyor belt and felt a pinch in her right arm and shoulder. OWCP assigned File No. xxxxxx300. It subsequently accepted the claim for a right shoulder and upper arm sprain and other affections of the right shoulder region, not elsewhere classified. Appellant received continuation of pay and then compensation benefits for wage loss. She returned to modified duty on February 4, 2013. On March 22, 2013 appellant underwent an authorized right shoulder subacromial decompression and limited synovectomy. She began receiving compensation benefits for wage loss. On June 10, 2013 appellant returned to light duty as a modified transportation security officer on a full-time basis.

In a July 9, 2014 letter, appellant requested that OWCP expand her accepted condition to include a left shoulder condition. She stated that she injured her left shoulder while compensating for her right shoulder. Appellant indicated that she was forced to work with her shoulder condition as OWCP did not authorize pain as a viable reason to be off work. She indicated that her physician, Dr. Carol Orr, a family practitioner, was aware of her condition and that she had a magnetic resonance imaging (MRI) scan of her left shoulder.[4]

On November 9, 2012 a nurse practitioner noted that appellant reported right shoulder pain that radiated down her arm having injured it at work the previous night while lifting heavy luggage onto the conveyer belt.

In a November 15, 2012 medical report, Dr. Orr diagnosed "sprain shoulder, rotator cuff, impingement syndrome of shoulder, and muscle spasm" as a result of the November 8, 2012 work injury.

A November 20, 2012 right shoulder x-ray report diagnosed right shoulder impingement.

An MRI scan performed on December 11, 2012 of the right shoulder showed impingement of the supraspinatus tendon with secondary degenerative tendinosis and a tiny bursal surface tear.

Dr. Orr noted, in a December 17, 2012 report, that appellant sustained a right shoulder injury on November 8, 2012 and had a history of left shoulder impingement. She reported that appellant was concerned that the recent lifting injury may have aggravated her earlier left shoulder impingement condition as she was lifting the bag with both arms. Dr. Orr noted that appellant had pain in the left shoulder with range of motion.

[4] Under File No. xxxxxx721, date of injury September 10, 2010, appellant has an accepted left shoulder rotator cuff sprain. OWCP combined the case records involving appellant's bilateral upper extremity injuries and designated File No. xxxxxx300 as the master file.

Physical therapy reports from December 6, 13, and 20, 2012 and January 3, 10, 17, 24, and 31, February 15, 20, and 27, and March 5, 2013 showed near full range of motion in the right shoulder with no tenderness.

In a January 17, 2013 report, Dr. Orr reported a history of right shoulder injury on November 8, 2012 and a previous left shoulder impingement injury. She noted that appellant was compensating for her right shoulder and had increased pain in the left shoulder.

The record substantiates that appellant returned to modified full-time work on February 4, 2013.

In a February 8, 2013 report, Dr. Sydney Smith, an orthopedic surgeon, recommended right shoulder surgery.

Dr. Orr again noted, in a February 19, 2013 report, that appellant stayed home due to right shoulder pain on February 13, 15, and 18, 2013. She also left work early on February 12, 2013 due to right shoulder pain.

A March 21, 2013 MRI scan of the left shoulder showed partial tears of the suprapinatus tendon and rotator interval and a superior glenohumerol ligament tear.

On March 22, 2013 appellant underwent a right shoulder subacromial decompression surgery.

In a March 28, 2013 report, Dr. Orr reported on appellant's right shoulder condition postsurgery. She also noted that appellant continued to have pain in her left shoulder post MRI scan of the left shoulder with some bruising in front of the left shoulder post arthrogram.

In an April 29, 2013 report, Dr. Orr noted that appellant continued to have pain in the left shoulder post MRI scan. She reported reduced range of motion of the left shoulder with weakness. An April 29, 2013 physical therapy report indicated that appellant had full external and internal rotation of the right shoulder.

Dr. Smith noted on May 2, 2013 that appellant reported injuring her left shoulder at work when lifting luggage on September 10, 2010. He diagnosed left shoulder impingement/cuff tendinosis, as seen on MRI scan.

In a June 6, 2013 report, Dr. Orr reported that appellant's right shoulder pain had decreased postsurgery, and with physical therapy. She indicated that most of appellant's pain was in her left shoulder. Dr. Orr noted that appellant believed she had also injured her left shoulder on November 8, 2012 and that symptoms increased on that side after that date. Appellant maintained that left shoulder pain never went away fully from the left shoulder injury of September 10, 2010 even though she was working full duty. She also indicated that OWCP was combining both shoulder claims.

Appellant returned to full-time light-duty work on June 10, 2013.

In a July 8, 2013 report, Dr. Orr indicated that appellant sustained a right shoulder injury on November 8, 2012 and that her left shoulder was also injured as she was lifting with the left

shoulder as well. Postarthroscopy of the right shoulder was doing well. Dr. Orr recommended that physical therapy be approved by OWCP for both shoulders. She diagnosed left shoulder reoccurrence/aggravation of preexisting impingement/supraspinatus tear and superior glenohumeral ligament tear.

In August 20 and September 12, 2013 reports, Dr. Orr noted that appellant sustained a right shoulder injury on November 8, 2012 and that her left shoulder was also injured at that time as she was also lifting with the left shoulder. She reported that appellant's left shoulder dysfunction increased last week on August 17, 2013 while at work lifting empty bins. Dr. Orr opined that appellant had left shoulder recurrence/aggravation of preexisting impingement/ supraspinatous tear and superior glenohumeral ligament tear found on MRI scan. She also noted that there were objective findings on MRI scan of the left shoulder, as well as loss of function/range of motion, loss of strength, and swelling, after November 8, 2012.

On June 17, 2014 Dr. Orr took appellant off work from June 17 through 18, 2014 due to her left rotator cuff syndrome, right shoulder pain for more than three months, and impingement syndrome of left shoulder and left glenoid labrum tear.

In a letter dated October 14, 2014, OWCP noted the issue as whether a consequential left shoulder condition should be accepted from the date of injury of November 8, 2012 to August 16, 2013. It explained that the event of lifting empty bins at work on August 17, 2013 constituted an intervening event after the date of the original injury (November 8, 2012) which would possibly be a new injury beginning on August 17, 2013, for which appellant may want to file a new left shoulder claim. OWCP advised that the current claim was accepted for right shoulder and upper arm sprains and other affections of the right shoulder not elsewhere classified. It noted that the evidence of record was insufficient to expand the accepted conditions to include a left shoulder condition, as there was no narrative medical report explaining how appellant suffered a consequential left shoulder injury. Appellant was requested to provide additional factual and medical information, within 30 days, including a narrative medical report from her physician which explained how her accepted right shoulder injury caused the left shoulder injury.

In October 4, 2013 and January 27, June 17, September 19 and October 23, 2014 reports, Dr. Orr explained that appellant sustained a right shoulder injury on November 8, 2012 and that her left shoulder was also injured at that time as she was lifting with both shoulders.

In her October 23, 2014 report, Dr. Orr indicated that appellant returned to modified duty on February 4, 2013, and on that same day she was compensating for her right shoulder with her left shoulder, which caused the left shoulder condition. She advised that the left shoulder should fall under the November 8, 2012 injury. Dr. Orr noted that the MRI scan of the left shoulder showed supraspinatus tear and superior glenohumeral ligament tear and that appellant had a preexisting impingement of the left shoulder that had never been surgically treated, which caused her to be at greater risk for development of the left shoulder injury on February 4, 2013 when she returned to work. She indicated that the left shoulder could be claimed as a new injury on February 4, 2013, but requested that a consequential left shoulder condition be accepted under the November 8, 2012 injury as appellant was compensating for the right shoulder injury.

In her January 27, 2014 report, Dr. Orr opined that appellant was compensating for left shoulder pain while recuperating from right shoulder surgery which prolonged recovery of the right shoulder condition. She explained that the preexisting impingement from her prior left shoulder injury was aggravated by the November 8, 2012 injury. Dr. Orr noted that the supraspinatus tear and superior glenohumeral ligament tear of the left shoulder found on MRI scan were caused by this new injury. She presented positive examination findings for the left shoulder, but noted that OWCP had denied surgery of the left shoulder. Multiple treatment notes were also submitted from Dr. Orr.

By decision dated August 20, 2015, OWCP denied appellant's claim finding insufficient medical evidence to establish a consequential left shoulder condition causally related to her accepted right shoulder condition. It specifically found that while appellant's treating physician opined that she sustained the left shoulder injury concurrently with the right shoulder injury on November 8, 2012, no mention was made of a left shoulder injury until June 6, 2013.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[5]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[6] The second component is whether the employment incident caused a personal injury.[7] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[8]

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct.[9] Thus, a subsequent

[5] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[6] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[8] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[9] *Mary Poller*, 55 ECAB 483, 487 (2004); 1 Lex K. Larson, *Larson's Workers' Compensation Law* § 10-1 (Matthew Bender, Rev. Ed. June 2016).

injury, be it 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.[10]

ANALYSIS

Appellant alleges that she sustained a consequential left shoulder condition as a result of her accepted November 8, 2012 right shoulder injury. She has also alleged that she injured her left shoulder on November 8, 2012 at the same time she injured her right shoulder. OWCP denied appellant's left shoulder claim finding insufficient medical evidence to establish that her left shoulder was injured on November 8, 2012.

The Board finds that appellant has not established that her left shoulder condition was caused or aggravated by the November 8, 2012 lifting event or that she sustained a consequential left shoulder injury.

A series of medical reports from Dr. Orr were received. In her December 17, 2012 report, Dr. Orr noted that appellant had a history of left shoulder impingement and that appellant was concerned that her November 8, 2012 lifting injury may have aggravated the previous left shoulder condition because she was lifting a bag with both arms. She noted that appellant had pain in the left shoulder with range of motion. The Board finds that pain is a symptom and not a compensable medical diagnosis.[11] Dr. Orr failed to explain with medical rationale and based upon contemporaneous medical evidence, that appellant sustained a left shoulder injury on November 8, 2012.[12]

While subsequent evidence from Dr. Orr appears to support that appellant sustained a consequential left shoulder condition on February 4, 2013 when she returned to modified duty, her reports are not rationalized. In her January 27 and October 23, 2014 reports, she explained that, when appellant retuned to modified duty on February 4, 2013, she was compensating for her right shoulder with her left shoulder, which caused the left shoulder condition. Dr. Orr noted that the MRI scan of the left shoulder showed a supraspinatus tear and a superior glenohumeral ligament tear and that appellant had a preexisting impingement of the left shoulder, which caused her to be at greater risk for development of the left shoulder injury on February 4, 2013. She explained in her 2014 reports that the aggravation of the preexisting impingement made appellant more likely to cause additional injury to the left shoulder. Dr. Orr further stated that the supraspinatus tear and superior glenohumeral ligament tear found on MRI scan was caused by this injury. However, she failed to provide a rationalized medical opinion, supported by objective evidence, explaining how the supraspinatus and superior glenohumeral ligament tears found on MRI scan were caused by the November 8, 2012 left shoulder injury or developed after appellant returned to modified duty on February 4, 2013. Rather, Dr. Orr generally concluded that appellant's preexisting condition was aggravated, which made her more likely to cause injury to her left shoulder. The Board has found that medical evidence which states a

[10] *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

[11] *V.S.*, Docket No. 14-2028 (issued June 3, 2015).

[12] *See E.L.*, Docket No. 12-791 (issued August 29, 2012).

conclusion, but does not offer any rationalized medical explanation is of limited probative value.[13]

Accordingly, the Board finds that appellant has not submitted sufficient medical evidence to establish that her left shoulder condition either arose as a direct result of the November 8, 2012 employment injury or as a consequence of her return to modified duty on February 4, 2013.

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 her burden of proof to establish that her left shoulder condition was causally related to her accepted November 8, 2012 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[13] *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).