United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	**Docket No. 16-1797**
	)	**Issued: March 10, 2017**
DEPARTMENT OF THE ARMY, MATERIAL COMMAND, Anniston, AL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 9, 2016 appellant filed a timely appeal of an August 19, 2016 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 to consider the merits of the case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish additional right upper extremity conditions resulting from his March 7, 2008 employment injury; and (2) whether OWCP properly denied authorization for the requested right shoulder surgery.

FACTUAL HISTORY

On June 16, 2008 appellant, then a 25-year-old general equipment mechanic helper, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right rotator cuff tear on

[1] 5 U.S.C. § 8101 *et seq.*

March 7, 2008 while using an air jackhammer in the performance of duty. He indicated that he experienced pain from his shoulder to his chest.

Appellant filed a recurrence claim (Form CA-2a) on September 18, 2008 requesting medical treatment due to his March 7, 2008 employment injury. He noted that he was performing light duty and that his pain had not stopped.

The employing establishment terminated appellant on October 14, 2008 due to the expiration of his appointment.

By decision dated November 13, 2008, OWCP accepted appellant's claim for bicipital tenosynovitis on the right. It authorized intermittent wage-loss compensation benefits from April 7 through October 23, 2008. Appellant continued to request wage-loss compensation after October 23, 2008.

In a report dated June 10, 2010, Dr. Morton S. Rickless, an orthopedic surgeon, noted appellant's March 8, 2008 employment injury and described an external rotation injury to his right upper extremity. He reviewed appellant's right shoulder x-rays, which demonstrated slight deformity of the distal clavicle.

By decision dated July 29, 2010, OWCP denied appellant's claim for compensation benefits from October 24, 2008 finding that he had failed to establish total disability for that period due to his accepted condition.

Dr. Rickless reviewed appellant's electrodiagnostic testing dated July 30, 2010 and diagnosed carpal tunnel syndrome. Appellant underwent a right shoulder magnetic resonance imaging (MRI) scan on July 22, 2010 which demonstrated tendinopathy or delamination tear of the supraspinatus tendon, but no full thickness tear or under surface tear of the right shoulder. His bones and labrum were unremarkable, but there was some moderate acromioclavicular (AC) joint arthropathy.

In a note dated August 16, 2010, Dr. Rickless mentioned appellant's March 8, 2008 employment injury and noted that appellant's position required repetitive work with tools including wrenches and jackhammers. He opined that appellant required carpal tunnel release. Dr. Rickless noted, "It is the opinion of this office, that since [appellant] did repetitive work with his hands that the carpal tunnel is related to his job." He again recommended carpal tunnel release on October 4, 2010. On November 15, 2010 Dr. Rickless diagnosed traumatic AC arthritis and carpal tunnel syndrome. He noted appellant's March 8, 2008 employment incident, appellant's ongoing reports of right arm pain and numbness, as well as his job duties of repetitive work with power and hand tools. Dr. Rickless recommended a Mumford Neer acromioplasty. On November 22, 2010 he requested authorization from OWCP for the procedure.

On November 24, 2010 OWCP's medical adviser reviewed appellant's claim and noted that the accepted condition was bicipital tendinitis. He noted that appellant's AC joint was not mentioned. OWCP's medical adviser recommended that OWCP deny the proposed surgical procedure.

In a letter dated December 6, 2010, OWCP noted that additional medical evidence was required to support appellant's request for right shoulder surgery. It noted no further consideration of the surgical request would be made until the requested medical evidence was received.

Dr. Rickless completed a report on December 20, 2010 and noted appellant's March 8, 2008 employment injury. He reported appellant's right shoulder pain and decreased range of motion and diagnosed traumatic AC arthritis and carpal tunnel syndrome. On April 4, 2011 Dr. Rickless indicated that appellant recently sustained a fall with a direct blow to his right shoulder.

Dr. Milka E. Martinez Arache, a Board-certified internist, examined appellant on October 9, 2012. She mentioned his March 8, 2008 employment injury and his right shoulder pain. Dr. Arache found that appellant had right shoulder tenderness and mild pain with motion. She examined him on November 14, 2012 and reported that his right shoulder pain was aggravated by lifting and movement. Dr. Arache prescribed pain medication for appellant's right shoulder on January 4, 2013.

Dr. Rickless examined appellant on March 20, 2013 and noted that his symptoms of right shoulder pain began on March 7, 2008. He diagnosed shoulder pain and carpal tunnel syndrome. Dr. Rickless again requested shoulder surgery on April 8, 2013.

In a letter dated April 10, 2013, OWCP instructed appellant that additional medical evidence was necessary to establish that the requested surgery was causally related to his accepted employment injury. In a May 2, 2013 letter addressed to Dr. Rickless and to Dr. Arache, it advised the physicians of the medical evidence needed with respect to appellant's request for surgery. OWCP afforded 30 days for a response.

Dr. Stanley W. Jett, a family practitioner, examined appellant on April 29, 2013 and found tenderness over the anterior portion of the shoulder inferior to the distal clavicle. He noted that range of motion was limited by pain and that lifting was limited to less than 10 pounds. Dr. Jett found crepitation with range of motion of the right shoulder. He diagnosed pain in joint involving shoulder region. Dr. Jett continued submitting status reports.

On June 6, 2013 OWCP received a copy of its May 2, 2013 letter that was sent to Dr. Rickless' office. Handwritten notations on the letter included a diagnosis of traumatic arthritis of the right shoulder and a request for authorization to perform Mumford Neer arthroplasty. The letter was not signed and there is no indication of who provided the handwritten notations.

By decision dated August 21, 2014, OWCP informed appellant that pain was not an accepted diagnosis under FECA. It denied his claim finding that the medical evidence of record was insufficient to establish that any additional medical conditions were due to his March 7, 2008 employment injury. OWCP further denied appellant's requested shoulder surgery.

Appellant requested reconsideration on April 9, 2015. In support of his reconsideration request, he submitted an affidavit noting that on March 7, 2008 he injured his right shoulder at work. Appellant indicated that he had no prior shoulder injuries and had no new traumatic

injuries to his shoulder since March 7, 2008. He indicated that he had not been released from light duty. Appellant also submitted medical evidence dated from March 30, 2015 through June 17, 2010. In a September 30, 2014 note, Dr. Rickless opined that appellant had an on-the-job injury, which resulted in pain in the right shoulder due to traumatic arthritis and tendinitis of the rotator cuff. He diagnosed unspecified disorder of the bursae and tendons in the right shoulder as well as arthritis of the right shoulder. On March 30, 2015 Dr. Rickless diagnosed bicipital tenosynovitis and traumatic arthritis due to the March 2008 work injury. He noted that appellant worked with power tools, which could have caused damage to his right shoulder. Dr. Rickless indicated that the Mumford Neer arthroplasty was medically necessary as appellant had documented arthritis in the right AC joint with no tear.

Dr. Jett completed a report dated March 30, 2015 and diagnosed right bicipital tenosynovitis and traumatic arthritis of the right shoulder caused by the March 2008 employment injury. He explained that appellant developed bicipital tenosynovitis of the right shoulder using an air chisel and jackhammer. Dr. Jett opined that the repetitive use of heavy equipment with the bicipital tenosynovitis led to chronic traumatic arthritis of the shoulder. He recommended a Mumford Neer Arthroplasty to remove a portion of appellant's shoulder bone. Dr. Jett noted that the partial arthroplasty would relieve the pressure on the bicipital tendon and allow some relief of pain, increasing activity, and helping with the arthritic pain in the shoulder.

OWCP's medical adviser reviewed appellant's request for surgery on May 27, 2015. He found that there was no clear documentation of what was causing appellant's shoulder pain and that the accepted condition of tenosynovitis of the biceps tendon would not account for traumatic arthropathy.

In a decision dated June 1, 2015, OWCP denied modification of the August 21, 2014 decision denying appellant's claim for an additional right shoulder condition and his request for surgery. It found that there was no rationalized medical opinion evidence supporting that the March 7, 2008 work injury, accepted for biceps tenosynovitis, resulted in appellant's ongoing right shoulder condition or the need for the Mumford Neer arthroplasty.

Appellant requested reconsideration and submitted additional medical evidence on May 11, 2016. In Dr. Rickless' November 9, 2015 note, he indicated that appellant's initial claim was bursitis, and that his MRI scan showed impingement syndrome. He noted that impingement syndrome consisted of several problems including bicipital tendinitis, pain at the AC joint, and rotator cuff tendinitis. Dr. Rickless further noted that appellant used a jackhammer and that the constant vibration of this tool could cause a shoulder injury. He opined, "This presented with the initial claim for tendinitis and was found to include other structures beside the tendon on MRI [scan]."

In a report dated June 6, 2016, Dr. Jett noted that appellant sustained an injury on March 8, 2008 resulting in bicipital tenosynovitis on the right and bilateral carpal tunnel syndrome. He opined, "These injuries are a result of the repetitive operation of the air chisel jackhammer [appellant] used to perform his job." Dr. Jett recommended surgery.

By decision dated August 19, 2016, OWCP denied modification of its prior decisions, which denied surgical authorization and additional work-related conditions. It found that

appellant had filed a traumatic injury claim, but that the medical evidence suggested that his need for surgery was due to repetitive injuries occurring over the course of more than one work shift.

LEGAL PRECEDENT -- ISSUE 1

Appellant bears the burden of proof to establish that a condition not accepted or approved by OWCP is causally related to an employment injury.[2] Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[3] The opinion of the physician must be based on a complete factual and medical background of the claimant,[4] must be one of reasonable medical certainty[5] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."[7]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish an additional condition resulting from his March 7, 2008 employment injury.

OWCP accepted appellant's March 7, 2008 traumatic injury claim for bicipital tenosynovitis on the right. Subsequently, appellant has submitted medical evidence documenting additional conditions of the right shoulder and upper extremities including right shoulder pain, bilateral carpal tunnel syndrome, moderate AC joint arthropathy, traumatic AC arthritis, and unspecified disorder of the bursae and tendons in the right shoulder. In order to meet his burden of proof to establish additional conditions resulting from his accepted March 7, 2008 employment injury, he must submit medical opinion evidence establishing a causal relationship between these diagnosed conditions and his March 7, 2008 employment injury.

In support of his additional claimed conditions of right shoulder pain, appellant submitted reports from Drs. Jett and Arache. The Board has held that the mere diagnosis of "pain" does not constitute the basis for payment of compensation.[8] To the extent that these reports only

[2] *See V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[3] *John J. Montoya*, 54 ECAB 306 (2003).

[4] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[5] *Supra* note 3.

[6] *Judy C. Rogers*, 54 ECAB 693 (2003).

[7] 20 C.F.R. § 10.5(ee).

[8] *Robert Broome*, 55 ECAB 339 (2004).

diagnosis pain, the reports are insufficient to meet appellant's burden of proof to establish a traumatic injury claim.

Appellant also submitted a series of reports from Drs. Jett and Rickless addressing his ongoing right shoulder conditions of moderate AC joint arthropathy, traumatic AC arthritis, and unspecified disorder of the bursae and tendons in the right shoulder as well as bilateral carpal tunnel syndrome. These physicians opined that appellant's diagnosed conditions were due to his employment, but did not attribute the conditions to appellant's work shift on March 7, 2008. Both Dr. Jett and Dr. Rickless indicated that appellant's employment duties over a period of time, including the use of jackhammers and other tools, contributed to his bilateral carpal tunnel syndrome and his various right shoulder conditions. Dr. Rickless noted that appellant did repetitive work with his hands and that his job duties required repetitive work with power and hand tools. Dr. Jett attributed appellant's upper extremity conditions to the repetitive use of heavy equipment. As appellant's physicians indicate that his ongoing upper extremity conditions were due to a series of events or incidents, which did not occur within a single workday or shift, these reports cannot establish additional conditions due to the accepted traumatic injury on March 7, 2008. Instead, these reports suggest that the physicians are supporting that appellant's employment may have caused an occupational disease.[9] In any event, the physicians did not explain how the March 7, 2008 work injury caused or contributed to the additional conditions.

LEGAL PRECEDENT -- ISSUE 2

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree, or the period of disability, or aid in lessening the amount of monthly compensation.[10] While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[11]

In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on OWCP's authority being that of reasonableness.[12] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[13] To be entitled to reimbursement of medical expenses, a claimant has the burden of

[9] *See* 20 C.F.R. § 10.5(q) (occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift).

[10] 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999); *P.F.*, Docket No. 16-0693 (issued October 24, 2016).

[11] *Kennett O. Collins, Jr.* 55 ECAB 648 (2004).

[12] *See D.K.*, 59 ECAB 141 (2007).

[13] *Minnie B. Lewis*, 53 ECAB 606 (2002).

establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition. Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[14] In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.[15]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied authorization for the requested right shoulder surgery.

Drs. Jett and Rickless opined that appellant required a Mumford Neer procedure on his right shoulder due to the condition of traumatic AC arthritis. Appellant must submit evidence that shows that the requested medical procedure is both due to a condition causally related to an employment injury and that it is medically warranted. In the preceding analysis, the Board explained why the medical evidence did not support that his AC arthritis or other shoulder condition was causally related to his accepted condition. As the requested surgery has not been established to be causally related to appellant's employment injury, OWCP did not abuse its discretion by denying his requests for surgery.

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 an additional injury resulting from his March 7, 2008 employment injury. The Board further finds that OWCP properly denied authorization for the requested right shoulder surgery.

[14] *M.B.*, 58 ECAB 588 (2007).

[15] *R.C.*, 58 ECAB 238 (2006).

ORDER

IT IS HEREBY ORDERED THAT August 19, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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