United States Department of Labor
Employees' Compensation Appeals Board

J.S., claiming as personal representative of the estate of D.S., Appellant	)	
and	)	**Docket No. 17-0326**
DEPARTMENT OF THE NAVY, PORTSMOUTH NAVAL SHIPYARD, Portsmouth, NH, Employer	)	**Issued: February 13, 2018**

Appearances:
Bradley M. Lown, Esq., 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 29, 2016 appellant, through counsel, filed a timely appeal from an October 24, 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 over 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.*

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish that the employee had sustained a recurrence of disability commencing on July 12, 2012 causally related to the accepted June 5, 2008 employment injury; and (2) whether appellant has met his burden of proof to establish that the employee sustained an emotional condition as a consequence of the accepted June 5, 2008 employment injury.

On appeal counsel contends that the employee developed depression as a consequence of his accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances as set forth in the prior Board decisions are incorporated herein by reference. The relevant facts are set forth below.

On June 16, 2008 the employee, then a 38-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that, on June 5, 2008, he sustained right hip and lateral thigh cutaneous femoral nerve syndrome as a result of his gun belt compressing the nerves in his right hip while getting in and out of a patrol car and ascending and descending stairs at work. He stopped work on June 10, 2008 and returned to limited duty on June 23, 2008.

By decision dated November 21, 2008, OWCP denied the employee's claim as the medical evidence of record was insufficient to establish that the diagnosed medical condition was causally related to the accepted employment incident. On July 22, 2009 an OWCP hearing representative affirmed this decision. By decision dated June 21, 2010, the Board set aside the July 22, 2009 decision and remanded the case to OWCP to further develop the medical evidence.[3] Following further development of the medical evidence, on October 17, 2011, OWCP accepted the employee's claim for right-sided lumbosacral intervertebral disc impingement.

On January 8, 2013 the employee filed a recurrence claim (Form CA-2a) alleging a recurrence of disability on July 1, 2009 due to his accepted June 5, 2008 employment injury. He stopped work on July 12, 2012. In an accompanying undated statement, the employee noted that, after his original right hip injury, he returned to restricted duty.[4] He related that he was unable to perform certain jobs while working within his restrictions. The employee became depressed as a result of the way he was treated at work and due to his pain and limitations. He indicated that his depression was so bad that he was placed off work by Dr. M. David Lauter, an attending Board-certified family practitioner.

[3] Docket No. 09-2107 (issued June 21, 2010), *denying petition for recon.*, Docket No. 09-2107 (issued November 16, 2010).

[4] The record indicates that, following the June 5, 2008 employment injury, appellant returned to a temporary limited-duty position as a traffic administrator, 10 hours a day, four days a week with restrictions.

OWCP received several medical records from Dr. Lauter. In treatment notes dated August 16, 2007 to December 28, 2012, Dr. Lauter addressed the employee's back and hip pain and depression. He advised that his condition was static and no further recovery or remission was expected. Dr. Lauter listed the employee's physical limitations which were in effect indefinitely.[5] On November 21, 2008 and June 6, 2012 he found that the employee had neuralgia paraesthetic based on his history of chronic trauma/pressure to the area and distribution of pain consistent with his history. Dr. Lauter related that the onset of this condition occurred June 5, 2008. He reiterated that no further recovery or remission was expected. In July 24 and September 11, 2009 prescriptions, Dr. Lauter limited the employee to working no more than 10 hours a day, four days a week due to neuralgia parathestica and other medical issues. On July 29, 2011 he noted that in 2008 the employee had a chronic injury to his right hip and thigh from his gun belt. Dr. Lauter indicated that the employee had been working 40 hours a week as a traffic administrator for two years, despite having pain that perhaps had worsened. He advised that slow deterioration was likely. Dr. Lauter further advised that the employee could continue to work 40 hours a week within restrictions. He noted that he was on medication for depression. In an August 22, 2012 note, Dr. Lauter reported that the employee had continued depression for which he took medication. He advised that his condition was due to issues related to work and his injury. Dr. Lauter related that the employee was unable to work.[6] On January 15, 2013 he again noted that the employee suffered from depression. Dr. Lauter related that he believed that this condition was probably directly related to his injury, disability, and how he was treated at work. He indicated that his prognosis was poor and addressed the employee's treatment plan.

In September 17, 2008 to August 4, 2010 reports, Dr. William S. Sutherland, a Board-certified orthopedic surgeon, noted the employee's right groin and hip symptoms. He reported findings and provided an impression of an unusual nerve type syndrome involving anterior thigh and groin symptoms that appeared neurologic in nature and may be related to the employee's previous hernia pathology and surgery or may also be an unusual meralgia paresthetica. Dr. Sutherland noted that the employee was performing light-duty work.

By letter dated March 13, 2013, counsel asserted that the employee had depression which his physicians confirmed was related to his accepted injury and resultant disability. He noted that the employee was terminated from the employing establishment effective January 25, 2013 due to his medical inability to perform his full range of duties. Counsel claimed that his medical inability was caused before July 2012, by his accepted injury. He requested wage-loss compensation benefits as of January 25, 2013.

[5] In an August 31, 2007 note, Dr. Lauter noted that on May 11, 2007 appellant had a left inguinal hernia and was off work for three weeks. The record contains May 12 to September 27, 2007 reports from Dr. Peter K. Carter, a Board-certified surgeon, who diagnosed left inguinal hernia and noted surgically repairing this condition. He subsequently released the appellant to return to full normal activity.

[6] A February 15, 2012 lumbar spine magnetic resonance imaging (MRI) scan report noted no significant disc bulge or herniation. There was some borderline mild central stenosis at L3-4 and L4- 5, likely in part due to some congenital shortening of the pedicles. Also noted was right neural foraminal narrowing at L3-4, borderline mild narrowing bilaterally at L4-5, and facet joint arthrosis with some reactive marrow edema in the right facet at Ll-2.

In a May 23, 2013 letter, OWCP advised the employee of the deficiencies of his recurrence claim and requested that he submit additional medical and factual evidence. The employee was afforded 30 days to provide additional evidence in support of his claim.

On June 12, 2013 the employee reiterated that he was unable to perform restricted-duty work after his original right hip injury due to depression, pain, and restrictions. He maintained that he had no preexisting depression or emotional problems. OWCP also received a February 15, 2013 medical marijuana program certification signed by Dr. Patrick Mulcahy, a Board-certified family practitioner. Dr. Mulcahy certified the employee's participation in the program through August 13, 2013.

By decision dated July 11, 2013, OWCP denied the employee's claim for a recurrence of disability. It also found that the evidence of record was insufficient to establish that his emotional condition was a consequence of his accepted June 5, 2008 employment injury.

In a September 13, 2013 letter, counsel requested reconsideration. He submitted a September 4, 2013 report from Dr. Craig E. Stenslie, a clinical psychologist. Dr. Stenslie reviewed the employee's medical and employment records and personal history. He interviewed the employee and reported a Beck Depression Inventory score of 47. This score indicated a severe and quite significant level of clinical depression with a high level of vegetative signs and symptoms. Dr. Stenslie related that the data was indicative of moderate-to-severe major depression with a single lengthy and essentially unbroken episode caused by the 2008 right hip work injury as noted in prior medical records that he reviewed. These records clearly indicated that the employee was under stress and depressed due to his concern about loss of work and difficulty coping with the pain of injury, perceived negative treatment and lack of accommodation at work, and his physical limitations which were secondary to his 2008 injury. Based on testing, the employee's mental status, content of his thinking, and his emotional state in an extended interview on August 2013, Dr. Stenslie advised that the employee showed multiple signs of clinical depression, including low mood, a sense of hopelessness and helplessness, vague suicidal ideation, low energy, low interest in activities previously enjoyed and accomplished, social isolation, and irritability. He opined that his depression stemmed directly from his 2008 hip injury and subsequent pain and loss of physical function, including problems with dressing himself; limitations in lifting, walking, and any type of vigorous physical activity; and ultimately loss of ability for gainful employment.

Dr. Stenslie related that the employee had no previous history of depression and there was no reason to believe the employee would have developed depression or had a propensity to develop depression absent some type of catastrophic life event or circumstances such as the significant 2008 physical work injury and his subsequent loss of ability for physical activity and gainful employment. The employee's depression was also exacerbated by his difficulties in his relationship with his daughter. However, Dr. Stenslie maintained that there was no evidence historically to suggest that his depression was caused by difficulties with his daughter or his divorce, including difficulties with his ex-wife. He pointed out that the employee had worked at the employing establishment without significant depression after his divorce and while raising his daughter as a divorced parent. Dr. Stenslie opined that the employee's difficulties with his daughter and any exacerbation of his depression regarding these difficulties with her almost undoubtedly stemmed from his deteriorating physical, mental, and emotional status over the past

year and a half or so and his stated embarrassment regarding his deteriorated status. He related that the employee required ongoing treatment.

The employee died on February 4, 2014 due to a stroke. On February 18, 2014 counsel appealed OWCP's July 11, 2013 decision to the Board.[7] By order dated June 3, 2014, the Board dismissed the appeal.[8]

By decision dated June 4, 2014, OWCP denied modification of its July 11, 2013 decision. It found that Dr. Stenslie did not provide a rationalized medical opinion sufficient to establish causal relationship between the employee's emotional condition and the accepted June 5, 2008 employment injury.

By letter dated August 7, 2014, received by OWCP on March 27, 2015, counsel requested reconsideration and submitted an additional report from Dr. Stenslie. In a July 23, 2014 addendum, Dr. Stenslie related that he sought to provide a specific and rationalized opinion on causal relationship. He again reviewed prior findings noted in the medical record regarding the employee's emotional condition. Dr. Stenslie reiterated his prior finding that there was no evidence that the employee was depressed before 2008, including secondary to his divorce or previous injury which led to him ending a potential career as a professional golfer. He noted that, until 2008, the employee maintained gainful employment, an active lifestyle, a copacetic relationship with his ex-wife, and an ongoing relationship with his daughter. The employee indicated that being police officer was very important to him and that he felt he was quite talented for the job. Dr. Stenslie opined that the historical and psychological evidence indicated that his work had become intrinsic to his identity and sense of value, as having been the one thing he was good at and the source of financial stability for himself and his family and positive feelings about himself. He further opined that the causal connection between the employee's depression and what the employee referred to as high levels of stress in his life ran directly from his physical injury to his depression in his inability to continue with employment in law enforcement. Dr. Stenslie related that in his opinion, the evidence was clear that he was not depressed about family relationships, noting that his troubled relationship with his daughter occurred much later and well after his 2008 work injury. He advised that other factors such as, loss of recreational activities and disappointment with how the employee was treated at work, were decidedly secondary to the main cause of his depression, which was his physical injury that precluded work in law enforcement.

On August 10, 2016 OWCP requested that the employing establishment submit information regarding the employee's employment and treatment in its health unit. In response, it received medical and employment records, which included a January 25, 2013 Notification of Personnel Action (Form SF-50B) indicating that the employee was removed from the employing establishment effective that day due to his medical inability to perform the full range of his work duties.

[7] In a subsequent letter dated April 2, 2014, counsel withdrew the appeal before the Board. He stated that he wished to seek reconsideration before OWCP.

[8] *Order Dismissing Appeal*, Docket No. 14-0445 (issued June 3, 2014).

By decision dated October 24, 2016, OWCP denied modification of its June 4, 2014 decision. It found that the employee had not established a recurrence of total disability commencing on July 12, 2012 and that Dr. Stenslie's July 23, 2014 addendum was insufficient to establish that the employee's emotional condition was caused by a compensable employment factor.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition resulting from a previous injury or illness without an intervening cause or a new exposure to the work environment that caused the illness. It can also mean an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[9]

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish, by the weight of the reliable, probative, and substantial evidence, a recurrence of total disability and an inability to perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.[10] To establish a change in the nature and extent of the injury-related condition, there must be a probative medical opinion, based on a complete and accurate factual and medical history as well as supported by sound medical reasoning, that the disabling condition is causally related to employment factors.[11] In the absence of rationale, the medical evidence is of diminished probative value.[12] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, it must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[13]

ANALYSIS -- ISSUE 1

The Board finds that the employee has failed to establish a recurrence of total disability commencing on July 12, 2012 causally related to the accepted employment injury.

[9] *J.F.*, 58 ECAB 124 (2006). A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties, or other downsizing. 20 C.F.R. § 10.5(x). *See also Richard A. Neidert*, 57 ECAB 474 (2006).

[10] *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Terry R. Hedman*, 38 ECAB 222 (1986).

[11] *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

[12] *Id.*; *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[13] *Ricky S. Storms*, 52 ECAB 349 (2001).

OWCP accepted that the employee sustained right-sided lumbosacral intervertebral disc impingement in the performance of duty. As of July 12, 2012, the employee was performing limited-duty work, 10 hours a day, 4 days a week with restrictions. He claimed disability compensation commencing on July 12, 2012, stating that he was depressed due to his treatment at work and his inability to perform his work duties due to pain and limitations.

The Board finds that the employee has not submitted sufficient medical opinion evidence to establish his claimed period of disability. Dr. Lauter's January 15, 2013 report found that the employee suffered from depression. He related that he believed the employee's condition was "probably" directly related to his injury, disability, and treatment at work. Dr. Lauter's August 22, 2012 notes found that the employee had continued depression for which he took medication. He advised that the employee was unable to work. Dr. Lauter opined that his condition was due to issues related to work and his injury. The Board notes that OWCP did not accept depression or any other emotional condition as causally related to the employee's employment.[14] Furthermore, Dr. Lauter's opinion on causal relationship is speculative in nature and insufficiently rationalized. The Board has held that medical opinions which are speculative or equivocal are of diminished probative value.[15] Furthermore, a mere conclusion without the necessary rationale explaining how work activities could result in the diagnosed condition is insufficient to meet the employee's burden of proof.[16] Dr. Lauter's opinion is of limited probative value as it does not contain any medical rationale explaining how the accepted right-sided lumbosacral intervertebral disc impingement caused or contributed to the claimed disability beginning July 12, 2012.

Other reports from Dr. Lauter either predate the alleged recurrence of disability or fail to offer an opinion addressing whether the employee's diagnosed emotional condition was caused by the accepted June 5, 2008 employment injury. The Board has held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[17] The Board finds that Dr. Lauter's reports are insufficient to meet the employee's burden of proof.

Dr. Stenslie's reports attribute the employee's disability to an emotional condition. As noted, OWCP has not accepted an emotional condition. Dr. Stenslie did not otherwise provide a rationalized opinion explaining how the accepted condition caused or contributed to the claimed

[14] *See T.M.*, Docket No. 08-975 (issued February 6, 2009) (when a claimant claims that a condition not accepted or approved by OWCP was due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence).

[15] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (the Board has generally held that opinions such as the condition is probably related, most likely related, or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662 (2005) (medical opinions which are speculative or equivocal are of diminished probative value).

[16] *See D.P.*, Docket No. 17-0148 (issued May 18, 2017); *Beverly A. Spencer*, 55 ECAB 501 (2004).

[17] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

recurrence of disability beginning July 12, 2012. Thus, his reports are of diminished probative value.[18]

The other medical evidence submitted, which primarily includes diagnostic studies, is of limited probative value as it does not specifically address whether the employee's recurrence of disability beginning July 12, 2012 was causally related to the accepted right-sided lumbosacral intervertebral disc impingement.[19]

The Board, therefore, finds that appellant has not met his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Once the primary injury is causally connected with the employment, Larson[20] notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. 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.[21]

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, based on a complete factual and medical background, showing causal relationship. The opinion 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 factors or employment injury.[22]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[23] 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 employee.[24] Neither the mere fact that a disease or condition manifests itself during a period

[18] *See R.C.*, Docket No. 15-315 (issued May 4, 2015); *Ceferino L. Gonzales*, 32 ECAB 1591 (1981) (medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof).

[19] *See supra* note 17.

[20] Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* § 3.05 (2014).

[21] *Melissa M. Frederickson*, 50 ECAB 170 (1998).

[22] *Charles W. Downey*, 54 ECAB 421 (2003).

[23] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[24] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[25]

ANALYSIS -- ISSUE 2

The Board finds that the employee has not met his burden of proof to establish an emotional condition as a consequence of his accepted employment injury.

Dr. Lauter's January 15, 2013 report found that the employee suffered from depression. He related that he believed the employee's condition was "probably" directly related to his injury, disability, and treatment at work. Dr. Lauter's August 22, 2012 notes found that the employee was depressed and unable to work. He opined that this condition was due to issues related to work and the employee's injury. The Board finds, however, that Dr. Lauter's opinion on causal relationship is speculative in nature and insufficiently rationalized. The Board has held that medical opinions which are speculative or equivocal are of diminished probative value.[26] Furthermore, a mere conclusion without the necessary rationale explaining how work activities could result in the diagnosed condition is insufficient to meet the employee's burden of proof.[27] Dr. Lauter does not provide medical rationale explaining how the accepted June 5, 2008 employment injury caused or contributed to the diagnosed emotional condition.[28] Other reports from Dr. Lauter are of limited probative value as they do not specifically provide an opinion on the causal relationship between the employee's depression and the accepted June 5, 2008 employment injury.[29] For these reasons, the Board finds that Dr. Lauter's reports are insufficient to meet the employee's burden of proof.

Dr. Stenslie's September 4, 2013 and July 23, 2014 reports found that the employee had depression causally related to the accepted June 5, 2008 employment injury and his subsequent loss of ability to perform physical activity and loss of gainful employment. He maintained that the employee had no previous history of depression and, thus there was no reason to believe that the employee had a propensity to develop depression absent a catastrophic life event or circumstances, such as the 2008 work injury. A medical opinion, however, that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.[30] Dr. Stenslie did not adequately explain how the accepted employment injury

[25] *Dennis M. Mascarenas,* 49 ECAB 215 (1997).

[26] *See S.E.,* Docket No. 08-2214 (issued May 6, 2009) (the Board has generally held that opinions such as the condition is probably related, most likely related, or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley,* 56 ECAB 662 (2005) (medical opinions which are speculative or equivocal are of diminished probative value).

[27] *See D.P.*, Docket No. 17-0148 (issued May 18, 2017); *Beverly A. Spencer,* 55 ECAB 501 (2004).

[28] *D.P.*, *id.*; *S.H.,* Docket No. 16-1227 (issued February 9, 2017).

[29] *See supra* note 17.

[30] *John F. Glynn,* 53 ECAB 562 (2002).

caused or contributed to the employee's emotional condition and resultant disability.[31] Additionally, rationale is needed in view of Dr. Stenslie's initial opinion provided in his September 4, 2013 report that the employee's condition was also exacerbated by his relationship with his daughter. Dr. Stenslie also indicated that the employee may have had stress in his relationship with his ex-wife and in the loss of a potential career as a professional golfer due to a previous injury. While his July 23, 2014 addendum reiterated that the employee's depression was not the result of other stressors in the employee's life, the reasoning for this opinion was essentially that the employee was not depressed before the June 5, 2008 work injury. As noted, a temporal relationship alone will not suffice for purposes of establishing causal relationship.[32] Dr. Stenslie did not provide a fully rationalized opinion explaining why the diagnosed emotional condition was caused or aggravated by the 2008 work injury and why it was not solely attributable to nonwork factors.

The other remaining medical evidence of record, which primarily consists of diagnostic studies, is also of diminished probative value as it does not address why the employee's emotional condition was attributable to the accepted June 5, 2008 lumbar injury.[33]

For these reasons, appellant has not established that the employee sustained an emotional condition as a consequence of his June 5, 2008 work injury.

On appeal counsel contends that the employee developed depression as a consequence of his accepted employment injury. The Board finds that the weight of the medical evidence does not establish that the employee sustained an emotional condition causally related to the accepted June 5, 2008 work injury.

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 the employee has not met his burden of proof to establish a recurrence of disability commencing on July 12, 2012 causally related to his accepted employment injury. The employee also did not meet his burden of proof to establish an emotional condition as a consequence of his accepted employment injury.

[31] *See supra* note 14*; Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury).

[32] *See supra* note 30 and accompanying text.

[33] *Supra* note 17.

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2018
Washington, DC

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

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

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