United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 18-0522**
	)	**Issued: January 16, 2019**
DEPARTMENT OF THE ARMY, PINE BLUFF ARSENAL, Pine Bluff, AR, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 10, 2018 appellant filed a timely appeal from a July 14, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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.[3]

[1] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)(f). One hundred and eighty days from July 14, 2017, the date of OWCP's decision, was January 10, 2018. Since using January 17, 2018, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is January 10, 2018, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish additional bilateral arm, back, left leg, and neck conditions causally related to or consequential to his accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board.[4] The facts and circumstances as presented in the prior appeal are incorporated herein by reference. The relevant facts are as follows.

On April 3, 1992 appellant, then a 44-year-old explosives worker, filed a traumatic injury claim (Form CA-1) alleging that as he stepped down from a bus, his left leg caught on the top step, causing him to trip and fall out of the bus, landing on asphalt. He injured his left shoulder, right groin, and back. OWCP repeatedly denied appellant's traumatic injury claim. On October 4, 1993 and July 17, 1994 it also declined to reopen his claims for reconsideration of the merits. Appellant appealed these decisions to the Board on July 11, 1994, and by decision dated August 29, 1996, the Board affirmed OWCP's decisions.[5]

Following the Board's August 29, 1996 decision, OWCP further developed the claim and accepted it for lumbar and cervical sprains.[6]

Beginning on September 26, 2016, appellant provided medical records from the Department of Veterans Affairs (VA). These records addressed his diagnosed conditions of hypertension, carotid artery stenosis, cardiovascular accident, chronic obstructive pulmonary disease (COPD), prostate cancer, calcium pyrophosphate deposition disease (CPPD), hyperlipidemia, diverticular disease, right peroneal neuropathy, axonal polyneuropathy, degenerative joint disease, sarcoidosis, repeated bilateral total knee arthropathies, sensorineural hearing loss, venous insufficiency, depression, exposure to Agent Orange, spondylolisthesis, carpal tunnel syndrome, olecranon bursectomy, surgical repair of partial triceps tendon laceration, chondrocacinosis, dermatitis, large left posterolateral disc herniation, medial displacement of the of the L5 nerve root, complete tear of the supraspinatus tendon left shoulder, near complete full-thickness tear infraspinatus tendon left shoulder, left C7 nerve impingement, osteoarthritis of both ankles and right hind foot, and tinea pedis.

The medical reports submitted from the VA included handwritten notes dated May 18, 1992, which indicate that appellant fell on April 3, 1992 injuring his left shoulder, fourth and fifth fingers of his left hand, both feet, and legs.

On August 20, 2003 appellant reported sporadic numbness in his legs and Dr. Tahir Hassan, an internist, diagnosed degenerative joint disease of the lumbosacral spine and rheumatoid arthritis. In an August 27, 2003 note, Dr. Margaret A. West, an internist, examined appellant due

[4] Docket No. 94-2052 (issued August 29, 1996).

[5] *Id.*

[6] Appellant has three additional claims: OWCP File No. xxxxxx211; OWCP File No. xxxxxx514; and OWCP File No. xxxxxx462.

to bilateral leg numbness. Appellant reported that this condition had been occurring for over three months after he had bent over. Dr. West diagnosed large left disc herniation at L4-5 causing medial displacement of the L5 nerve root.

On June 30, 2005 appellant sought treatment due to neck pain and numbness of the left chest and left arm. He reported the numbness occurred when he turned his head to the left.

In a note dated March 3, 2009, Dr. Richard P. Evans, a Board-certified orthopedic surgeon, requested additional studies to determine if appellant had a neurogenic reason or impingement that could cause his intermittent weakness and falls. On August 3, 2010 Dr. Grace E. Brown, a Board-certified dermatologist, noted that appellant's chronic neck and lower back pain was worsened by a recent motor vehicle accident. Appellant sought treatment on November 26, 2013 from Dr. Andrew W. Johnson, a neurosurgeon, due to shooting pain from his back down his right leg which first occurred in 2009.

In a February 14, 2014 note, Dr. Shaukat Hayat, a Board-certified neurosurgeon, found weakness in appellant's quadriceps muscles and reviewed a magnetic resonance imaging (MRI) scan which found listhesis at L4-5 with a disc herniation. On June 10, 2014 appellant reported that he had fallen three weeks earlier and experienced chronic pain in his back radiating to his lower extremity. Dr. Zabeen K. Mahuwala, a neurologist, diagnosed L4-5 radiculopathy on February 14, 2014. In a September 12, 2014 note, Dr. Allan C. Gocio, a Board-certified neurosurgeon, diagnosed severe stenosis and spondylolisthesis L4-5 with radiculopathy and nerve root compression. He reported that appellant experienced low back, right arm, and right leg pain.

On March 30, 2015 Dr. Philip A. Snodgrass, a physician specializing in emergency medicine, examined appellant due to neck and back pain caused by degenerative disc disease. Dr. Leroy Q. Booe, Jr., a family practitioner, examined appellant on April 6, 2015 due to severe right lower extremity radiculopathy.

In a note dated April 13, 2015, appellant's physician, Dr. Lawrence C. Ault, a Board-certified anesthesiologist, reported that appellant was in his normal state of health until a motor vehicle accident "many years ago." He noted that appellant had undergone bilateral total knee replacements, and was experiencing cervical pain radiating into his arms and low back pain radiating into his legs.

On June 17, 2015 Dr. Eric Greber, an orthopedic surgeon, examined appellant due to left shoulder pain which had been ongoing since 2004. He diagnosed rotator cuff tear and arthropathy.

In a note dated September 3, 2015, Dr. Kipp A. Cryar, an orthopedic surgeon, diagnosed severe osteoarthritis of both ankles and the right hindfoot.

On December 13, 2015 appellant sought treatment due to pain in his right shoulder and head. He reported that a sign fell and hit him. Appellant had no loss of consciousness and no swelling on his head.

On December 30, 2015 Dr. Shahryar Ahmadi, an orthopedic surgeon, noted appellant's reports of left shoulder pain beginning 15 years earlier which occurred after a fall. He reviewed appellant's x-rays and noted similar findings in both shoulders.

In a note dated March 20, 2016, Dr. Robert T. Jimmerson, II, a family practitioner, diagnosed lumbar disc syndrome. On June 2, 2016 appellant sought treatment with Dr. Clinton Y. McCready, a physiatrist, for chronic back pain and chronic shoulder pain.

In a November 8, 2016 development letter, OWCP requested additional factual and medical evidence in support of appellant's claimed consequential injury of degenerative changes in the cervical and lumbar spines, left hip, left femur, left leg, left knee, both ankles, and right hind foot. A questionnaire was also provided. OWCP afforded appellant 30 days for response.

On December 5, 2016 appellant provided his responses to OWCP's questionnaire. Appellant asserted that when his spine was in varying positions, he experienced recurrences continuously. He reported that his spine, right shoulder, left leg, and ulnar nerve injuries were classified as permanent and total as of April 3, 1992 by two government agencies. Appellant further alleged that all of his illnesses and disabilities were related to his April 3, 1992 employment injury.

In a note dated May 15, 2014, Dr. Thomas L. Lewellen, an osteopath, diagnosed degenerative disc disease of the lumbar spine with neuropathy of the right leg.

By decision dated April 4, 2017, OWCP denied appellant's claim for recurrence of disability finding that he had not submitted medical evidence explaining how he had a "return" of or increase in disability due to his accepted employment-related injury.

In a letter received April 17, 2017, appellant requested reconsideration of the April 4, 2017 OWCP decision. He contended that he was a 100 percent service-connected disabled veteran and that his 1992 employment-related injuries could recur at any time. In support of his request for reconsideration, appellant provided additional medical documents. The medical records included multiple diagnostic tests, studies, and reports.

In a note dated September 16, 2003, Dr. Ali I. Raja, a Board-certified neurosurgeon, examined appellant due to dull low back pain which intensified to sharp stabbing pain in certain positions. He noted that appellant also experienced radicular pain. Dr. Raja reported that appellant had patchy areas of decreased sensation in both legs in a nonspecific pattern. He also found no pain in the lumbar region with deep palpation. Dr. Raja diagnosed possible neurosarcoidosis with weakness in his bilateral lower extremities and numbness upon bending over.

On October 7, 2003 appellant reported that he fainted and landed on his left shoulder. Dr. Torrance Walker, a Board-certified orthopedic surgeon, examined him on December 23, 2003 due to left shoulder pain. He noted that appellant fell on the point of his shoulder a few months prior to the examination and was subsequently unable to lift his arm. Appellant also reported pain in his right arm following a click in his neck.

In a March 31, 2004 note, Dr. Syed Hasan, a Board-certified internist, examined appellant due to left shoulder symptoms. He noted a history of a fall and reported that appellant had fallen again in September 2003.

On November 28, 2013 Dr. Nasim A. Khan, a rheumatologist, examined appellant and diagnosed possible spinal stenosis and unilateral right lower extremity pain. On December 16, 2013 appellant sought treatment for spinal stenosis and demonstrated thigh flexor wasting.

Dr. Shagufta P. Siddiqui, a Board-certified internist, examined appellant on December 19, 2013 due to worsening of the arthritic changes in his back and a herniated disc.

Dr. Hayat examined appellant on February 14, 2014 and recommended surgical decompression and stabilization of his lumbar spine.

In a note dated June 10, 2014, Dr. Mahuwala examined appellant due to degenerative joint disease, L4-5 radiculopathy with pain in the back radiating to the right lower extremity, and neck pain radiating to the right arm and little finger. She reviewed appellant's 2005 cervical MRI scan and 2010 lumbar MRI scan and diagnosed L4-5 radiculopathy and possible cervical radiculopathy.

On August 4, 2014 appellant fell.

In a note dated September 10, 2014, Dr. Gocio examined appellant due to severe stenosis with radiculopathy. Appellant reported low back, right arm, and right leg pain, as well as weakness in his lower extremities bilaterally due to multiple knee surgeries. Dr. Gocio diagnosed cervical and lumbar stenosis and a vague history of a brain tumor.

A note dated April 6, 2015 from Dr. Booe diagnosed severe spinal stenosis at L4-5 and right lower extremity radiculopathy.

In a note dated June 17, 2015, Dr. Ahmadi examined appellant's left shoulder and reported that appellant had experienced pain since 2004. He diagnosed left shoulder rotator cuff arthropathy. Appellant refused left shoulder surgery.

On December 15, 2015 Dr. Zsolt F. Sandor, a physician specializing in emergency medicine, diagnosed right shoulder contusion resulting after a sign fell on appellant's right shoulder. On January 19, 2016 appellant reported that he sustained a "pinched nerve" due to a recent accident.

On March 20, 2016 appellant sought treatment for lumbar disc syndrome, chronic low back pain, and sciatica. Dr. Clinton Y. McCready, a physiatrist, examined appellant on April 8, 2016 due to low back pain. He reviewed appellant's lumbar MRI scan and found advanced degenerative disc disease and right L4 nerve compression. Dr. Jimmerson, examined appellant on March 20, 2016 due to chronic low back pain and sciatica. Appellant reported that he was standing and his right leg collapsed.

On October 23, 2016 appellant sought treatment after a pressure cooker exploded in his home. He noted that he injured his back and head when he was knocked from his chair by the explosion. Following the October 2016 explosion, appellant had several falls through November 21, 2016. On January 26, 2017 he sought medical treatment following a fall on December 29, 2016 resulting in a comminuted nondisplaced proximal fibula fracture. Appellant also reported back and left lower extremity pain.

By decision dated July 14, 2017, OWCP denied modification of the April 4, 2017 merit decision finding appellant had not established consequential spine, right shoulder, left leg, and ulnar nerve conditions. It found that there was no medical evidence establishing a causal relationship between appellant's diagnosed conditions and his accepted employment injuries of cervical and lumbar strains.

LEGAL PRECEDENT

An employee seeking benefits under FECA[7] has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability for which compensation is claimed is causally related to the employment injury.[8]

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.[9]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.[10]

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 conduct.[11] Thus, a subsequent 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.[12] A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, the claimant must present rationalized medical opinion evidence.[13]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish additional bilateral arm, back, left leg, and neck conditions causally related to or consequential to his accepted employment injuries.

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[7] *Supra* note 2.

[8] *J.F.*, Docket No. 09-1061 (issued November 17, 2009). *See also J.T.*, Docket No. 17-0578 (issued December 6, 2017.

[9] *F.L.*, Docket No. 17-1613 (issued August 15, 2018).

[10] *Id.; I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell,* 41 ECAB 730 (1990).

[11] *A.M.*, Docket No. 18-0685 (issued October 26, 2018); *Mary Poller,* 55 ECAB 483, 487 (2004); 1 Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* 10-1 (2006).

[12] *F.L., supra* note 9; *Susanne W. Underwood (Randall L. Underwood),* 53 ECAB 139, 141 n.7 (2001).

[13] *F.L., supra* note 9; *Charles W. Downey,* 54 ECAB 421 (2003).

OWCP accepted that appellant sustained cervical and lumbar sprains from an April 3, 1992 injury when he fell from a bus in the performance of duty. It determined that his claim for recurrence was actually a claim that his currently diagnosed conditions were causally related to or consequential to the accepted employment injuries. Appellant was not asserting a worsening of his accepted conditions. Rather, he was asserting that his current bilateral arm, back, left leg, and neck conditions were caused by the work-related cervical and lumbar sprains. This is evidenced in appellant's December 5, 2016 statement.

Appellant submitted multiple reports from attending physicians which discussed his ongoing lumbar, cervical, shoulder, and leg conditions, but none of these reports provides a clear, rationalized opinion that any additionally diagnosed condition was caused by the accepted employment incident. Only the May 18, 1992 treatment note, mentions appellant's April 3, 1992 employment injury and diagnoses injuries of the left shoulder, fourth and fifth fingers of his left hand, both feet, and legs. The Board has held that a medical report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how physiologically an employment injury could have caused or aggravated a medical condition.[14] As the May 18, 1992 note does not address the accepted conditions of cervical and lumbar sprains nor does it explain how the April 3, 1992 employment injury resulted in the diagnosed conditions, this report is insufficient to establish appellant's claim for additional bilateral arm, back, left leg, and neck conditions.

The remainder of the medical reports submitted by appellant do not offer an opinion on the causal relationship between the diagnosed conditions and his accepted employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[15] These reports are therefore of no probative value in establishing that appellant's current bilateral arm, back, left leg, and neck conditions were causally related to his accepted employment injury.[16]

The medical evidence submitted by appellant contains several references to events occurring after the April 3, 1992 employment injury including motor vehicle accidents, falls, and explosions which impacted his arms, back, left leg, and neck conditions. Specifically, Dr. Ahmadi reported that appellant fell on his left shoulder in approximately 2000; on March 7, 2003 appellant fainted and fell on his left shoulder and then fell again in September 2003; on March 3, 2009 Dr. Evans reported that appellant had repeated falls; on August 3, 2010 Dr. Brown noted appellant was involved in a recent motor vehicle accident which worsened his chronic neck and back pain; Dr. Mahuwala reported a fall in May 2014; Dr. Sandor reported that appellant was struck on the head and shoulder by a sign in December 2015; in January 2016 appellant reported he sustained a pinched nerve due to a recent accident; March 20, 2016 appellant's left leg collapsed causing him to fall; and in October 2016 appellant was thrown from his chair when his pressure cooker exploded injuring his back and head. Following the explosion, appellant experienced several

[14] *F.L., supra* note 9; *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

[15] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[16] *Id.*

additional falls through November 21, 2016 and he fractured his fibula in a December 29, 2016 fall.

As previously noted, once the work-connected character of a condition is established, the subsequent progression of the condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.[17] From the list of events above, it is clear that the explosion, being struck by the sign, and the motor vehicle accident are independent intervening causes.[18] Therefore any change in appellant's accepted conditions of cervical and lumbar sprain following these incidents would not be considered work-related consequential injuries. In regard to his repeated falls, the changes in his diagnosed conditions as a result of these injuries would only be compensable if he submitted medical evidence establishing that these falls were the "direct and natural result" of his accepted cervical and lumbar sprains.[19] Appellant has not provided such medical opinion evidence.

The diagnostic testing of record is also of diminished probative value and is insufficient to establish appellant's consequential injury claim as diagnostic testing does not provide an opinion on the cause of the diagnosed conditions.[20]

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 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 additional bilateral arm, back, left leg, and neck conditions causally related to or consequential to his accepted employment injury.

[17] *See Sandra Dixon- Mills*, 44 ECAB 882, 885 (1993) (finding that bending over to lift an infant was an independent intervening cause); *Robert W. Meeson*, 44 ECAB 834, 840 (1993) (finding that an automobile accident was an independent intervening cause).

[18] *Id.*

[19] *See P.J.*, Docket No. 17-0570 (issued October 26, 2017) and *Karen C. Schaffer*, 39 ECAB 1219 (1988) (finding that the claimants had not established that their falls were caused by accepted employment injuries through the submission of rationalized medical opinion evidence).

[20] *F.L., supra* note 9; *C.P.*, Docket No. 15-0600 (issued June 2, 2015).

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2017 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 16, 2019
Washington, DC

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

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

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