United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 19-0809**
	)	**Issued: August 24, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Vandalia, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 6, 2019 appellant filed a timely appeal from a November 15, 2018 merit decision and a February 27, 2019 nonmerit 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 over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that acceptance of her claim should be expanded to include additional conditions causally related to or as a consequence of her March 3, 2017 employment injury; (2) whether she has met her burden of proof to establish that she was disabled commencing June 23, 2018 due to her accepted March 3,

[1] Appellant timely requested oral argument pursuant to 20 C.F.R. § 501.5(b). By order dated May 14, 2020, the Board exercised its discretion and denied the request as the matter could be adequately addressed based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 19-0809 (issued May 14, 2020).

[2] 5 U.S.C. § 8101 *et seq.*

2017 employment injury; and (3) whether OWCP properly denied appellant's request for an oral hearing as untimely filed under 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On March 6, 2017 appellant, then a 41-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 3, 2017 she injured her back, neck, both shoulders, and left knee when she tripped over a parcel while in the performance of duty. OWCP assigned OWCP File No. xxxxxx521 and accepted the claim for neck strain, a low back contusion, and bilateral shoulder contusions. Appellant stopped work on March 4, 2017 and returned to part-time modified employment on March 11, 2017.[3] OWCP paid wage-loss compensation on the supplemental rolls commencing April 15, 2017 for partial disability and for intermittent periods of total disability.

Appellant had previously filed a claim for a left hand injury on October 12, 2015, assigned OWCP File No. xxxxxx500 and a claim for a left shoulder injury on October 17, 2016, assigned OWCP File No. xxxxxx259. OWCP denied both claims.

In a letter dated April 5, 2017, Dr. Orin L. Hall, discussed appellant's trip and fall on March 3, 2017 and her history of a prior injury to her left shoulder in 2016. On examination he found positive impingement at the bilateral shoulders. Dr. Hall related that appellant had "suffered bilateral impingement, cervical, thoracic, and lumbosacral sprains as the direct and proximate result of the March 3, 2017 work injury and the claim should be amended to include the aforementioned diagnoses."

In an initial evaluation dated November 28, 2017, Dr. Charles Manfresca, an osteopath, reviewed appellant's history of a March 3, 2017 employment injury and noted that she was currently performing modified light-duty work for two hours per day. He noted that she had a history of left shoulder surgery performed in January 2016. Dr. Manfresca diagnosed neck strain, bilateral shoulder contusions, and left scapulothoracic dysfunction and bursitis due to the accepted employment injury. He described the mechanics of appellant's fall and opined that she had also likely experienced a mild concussion. Dr. Manfresca further opined that she had sustained sprains and strains of the rotator cuff tendons and mild impingement. He related that appellant had fallen backwards and struck a stool landing on the posterior aspect of her shoulder straining the anteriorstructures and also the biceps and glenoid labrum. Dr. Manfresca attributed her scapulothoracic dysfunction to the loss of shoulder motion from her rotator cuff injury. He advised that appellant's use of her right upper extremity performing light-duty employment had caused an increase in symptoms on that side.

A January 8, 2018 magnetic resonance imaging (MRI) scan of the cervical spine revealed multilevel degenerative disc and joint disease superimposed upon straightening of the normal cervical lordosis. An MRI scan of the right shoulder of even date revealed supraspinatus tendinosis with an interstitial partial tear and a tear or detachment of the mid posterior glenoid labrum. An MRI scan of the left shoulder also dated January 8, 2018 demonstrated postsurgical changes with

[3] The job offer specified that appellant would work a minimum of two hours per day.

subacromial decompression, supraspinatus tendon fraying, and a suspected inner margin partial detachment of the posterior glenoid labrum.

On February 22, 2018 Dr. Manfresca diagnosed neck strain, bilateral shoulder contusions, left scapulothoracic dysfunction and left bursitis. He provided expanded diagnoses of cervical spondylosis, cervical degenerative disc disorder, a partial right rotator cuff tear, and a tear of the glenoid labrum bilaterally. Dr. Manfresca advised that appellant had continued residuals of her employment injury and should be off work pending evaluation by an orthopedist.

In a report dated February 26, 2018, Dr. Jeremy Mathis, an osteopath, evaluated appellant for bilateral shoulder pain. He discussed the history of the March 3, 2017 employment injury, noting that she had no previous history of problems with her right shoulder. Dr. Mathis indicated that appellant had injured her left shoulder in October 2015 which had been treated with a rotator cuff repair and distal clavicle excision on January 23, 2016. He diagnosed contusions of the right and left shoulders.

On March 6, 2018 appellant filed a claim for wage-loss compensation (Form CA-7) for total disability from February 17 to March 2, 2018. An attached time analysis (Form CA-7a) indicated that there was no work available during that period within her restrictions. Appellant continued to submit CA-7 forms requesting wage-loss compensation for total disability from March 2 to May 25, 2018.

In a report dated March 20, 2018, Dr. Manfresca reviewed the history of appellant's March 3, 2017 employment injury and noted that she currently worked two hours per day limited duty.[4] He described her prior left shoulder injury and provided findings on examination. Dr. Manfresca provided the same diagnoses and expanded diagnoses as in his February 22, 2018 report. He noted that a physician in an April 5, 2017 report had found positive bilateral impingement due to her fall. Dr. Manfresca opined that appellant had aggravated the right shoulder impingement when she resumed work after her left shoulder surgery.

OWCP paid appellant wage-loss compensation for time lost from work until March 30, 2018.

On May 16, 2018 Dr. Manfresca requested that appellant's conditions be expanded to include an aggravation of cervical spondylosis and degenerative disc disease, a partial right rotator cuff tear, bilateral tears of the glenoid labrum, left scapulothoracic dysfunction and bursitis, impingement syndrome, and bicipital tendinitis.[5] He described her March 3, 2017 employment injury and noted that she had a history of a prior left shoulder injury treated in January 2016 with surgery. Dr. Manfresca advised that appellant had sustained a contusion when her shoulder struck the metal stool. She had experienced soft tissue trauma to her shoulder and upper back when she fell backwards hitting the stool and floor. Dr. Manfresca related that such a fall caused "abrupt

[4] In a report dated April 2, 2018, Dr. Mathis discussed appellant's complaints of continued pain in both shoulders. He diagnosed a bilateral shoulder contusion and provided a steroid injection. On May 7, 2018 Dr. Mathis diagnosed a bilateral shoulder contusion and again provided a steroid injection.

[5] In a May 7, 2018 duty status report (Form CA-17), Dr. Mathis indicated that appellant could work with restrictions.

stopping of the upper thorax, which strikes first, but the head continues in motion until its momentum is stopped by striking the ground" causing a whiplash injury to the neck. He noted that a report dated April 5, 2017 showed bilateral positive impingement of the shoulders which he attributed to her March 3, 2017 employment injury. Dr. Manfresca opined that when appellant had resumed modified employment after her left shoulder surgery she had used her right upper extremity for work causing overuse tendinopathy of the right shoulder. He opined that repetitive work activities had aggravated her cervical degenerative disc and joint disease. Dr. Manfresca reviewed the results of the MRI scans of the shoulder, noting that appellant had a partial right supraspinatus muscle tear and also a torn labrum that might be the result of her fall. He again advised that repetitive shoulder motion and her left shoulder injury contributed to her right rotator cuff disease. Dr. Manfresca further diagnosed right biceps tendinitis due to work activities that required repetitive elbow flexion and supination. He related, "It is my medical opinion that these conditions be added to [appellant's] claim as it is medically probable that her work activity has directly caused and/or worsened/aggravated these conditions."

By decision dated June 7, 2018, OWCP found that appellant had not established that she was disabled from employment beginning March 21, 2018 causally related to her March 3, 2017 employment injury.

In a letter dated June 7, 2018, the employing establishment questioned why OWCP had failed to pay appellant wage-loss compensation from March 31 through May 25, 2018, noting that it did not have work available within her restrictions during this period.

On June 12, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

On June 25, 2018 appellant accepted a position as a modified city carrier for six hours per day casing and carrying mail and no lifting parcels weighing over 20 pounds.

On July 10, 2018 appellant filed a CA-7 form requesting intermittent wage-loss compensation from June 23 to July 6, 2018. She filed CA-7 forms for intermittent wage-loss compensation from July 7 to 20, 2018, July 21 to August 3, and August 4 to 17, 2018.

Following a preliminary review, by decision dated September 5, 2018, OWCP's hearing representative vacated the June 7, 2018 decision. The hearing representative instructed OWCP to administratively combine the current case file with OWCP File Nos. xxxxxx500 and xxxxxx259 and refer appellant for a second opinion examination to determine the nature and extent of any ongoing conditions or disability due to the March 3, 2017 employment injury.

OWCP combined File No. xxxxxx259 and File No. xxxxxx500 into master File No. xxxxxx521.

On September 28, 2018 OWCP referred appellant to Dr. Albert E. Becker, a Board-certified orthopedic surgeon, for a second opinion examination. It requested that he advise whether she had any additional diagnoses due to the March 3, 2017 employment incident, whether the accepted conditions had resolved, and the extent of any disability. OWCP further requested that Dr. Becker address whether appellant was totally disabled from March 31, 2018 to the present.

In a report dated October 23, 2018, Dr. Becker reviewed appellant's history of injury and the medical reports of record. He discussed her complaints of continued right shoulder pain and neck stiffness. Dr. Becker noted that appellant had returned to work for four to six hours a day on June 23, 2018. He diagnosed contusions of the lumbar and cervical spine, neck sprain, and bilateral shoulder contusions at the posterior aspect. Dr. Becker indicated that examination findings demonstrated tenderness consistent with a soft tissue injury of the left neck and a direct blow to the shoulder. He measured full range of motion of both shoulders. Dr. Becker opined that appellant had no additional diagnoses due to her employment injury. He opined that the left shoulder and lumbar contusion had resolved and that she had no disability due to her left neck sprain. Dr. Becker noted that appellant had continued right shoulder pain and that, "despite the slight decrease of ROM and complaints of pain, there [was] no disability relative to the right shoulder." He found that she was capable of performing her usual employment and noted that she had worked for the last month for eight hours a day without restrictions. Dr. Becker advised that appellant had been off work beginning March 3, 2019 to receive medical treatment for her shoulders and that the treatment was medically indicated and appropriate. He noted that she had resumed modified part-time employment on June 23, 2018. Dr. Becker opined that appellant was totally disabled from March 3 to June 23, 2018, following which time she had increased her work tolerance until the prior month when she had returned to her usual employment full time.

By decision dated November 15, 2018, OWCP found that appellant was entitled to wage-loss compensation from March 31 through June 22, 2018, but denied her claim for compensation beginning June 23, 2018 and continuing. It noted that Dr. Becker had found that she had no new employment-related diagnoses and that the period of total disability ended on June 23, 2018, when she resumed part-time work.

On February 9, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated February 27, 2019, OWCP denied appellant's request for an oral hearing as untimely under 5 U.S.C. § 8124(b). It advised that it had exercised its discretion and considered her request, but found that the issue could be equally well addressed through the reconsideration process.

LEGAL PRECEDENT -- ISSUE 1

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.[6]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was

[6] *S.N.*, Docket No. 19-1050 (issued July 31, 2020); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[7] *G.R.*, Docket No. 18-0735 (issued November 15, 2018).

caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[8]

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, 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.[9]

Section 8123(a) of FECA provides, in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[10] This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[11] Where a case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[12]

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision.

A conflict in medical opinion evidence exists between Dr. Manfresca, appellant's attending physician, and Dr. Becker, an OWCP referral physician, regarding whether she sustained an aggravation of cervical spondylosis and degenerative disc disease, a partial right rotator cuff tear, bilateral tears of the glenoid labrum, left scapulothoracic dysfunction and bursitis, impingement syndrome, and bicipital tendinitis causally related to her accepted employment injury.

On November 28, 2017 Dr. Manfresca advised that appellant had sustained scapulothoracic dysfunction due to reduced shoulder motion from an injury to her rotator cuff resulting from her March 3, 2017 employment injury. He further found that her right upper extremity symptoms had increased due to her performing limited-duty work with that extremity. On February 22, 2018 Dr. Manfresca requested that appellant's diagnoses be expanded to include cervical spondylosis, cervical degenerative disc disorder, a partial right rotator cuff tear, and a tear of the glenoid labrum bilaterally. In a report dated May 16, 2018, he reviewed appellant's history of a March 3, 2017 employment injury and noted that she had previously underwent surgery on her left shoulder in January 2016. Dr. Manfresca described the mechanics of her March 3, 2017 fall and asserted that

[8] *Id*.

[9] *K.S.*, Docket No. 17-1583 (issued May 10, 2018); Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* § 3.05 (2014).

[10] 5 U.S.C. § 8123(a).

[11] *C.W.*, Docket No. 18-1536 (issued June 24, 2019).

[12] *V.K.*, Docket No. 18-1005 (issued February 1, 2019).

the sudden stopping of her upper thorax while her head continued in motion had caused a whiplash injury to her neck. He advised that appellant also sustained bilateral shoulder impingement due to her injury. Dr. Manfresca requested that OWCP expand acceptance of her claim to include an aggravation of cervical spondylosis and degenerative disc disease, a partial right rotator cuff tear, bilateral tears of the glenoid labrum, left scapulothoracic dysfunction and bursitis, impingement syndrome, and bicipital tendinitis. He further opined that appellant had sustained right biceps tendinitis and an aggravation of cervical degenerative disc disease due to repetitive employment activities. Dr. Manfresca further diagnosed an overuse tendinopathy of the right shoulder due to modified employment performed subsequent to her left shoulder surgery.[13]

On October 23, 2018 Dr. Becker diagnosed, as employment related, contusions of the lumbar and cervical spine, neck sprain, and bilateral shoulder contusions. He opined that appellant had sustained only a soft tissue injury to her neck and a direct shoulder blow. Dr. Becker found no additional diagnoses due to her accepted employment injury.[14] The Board notes, however, that he found only that she was not totally disabled after June 23, 2018 as she had resumed part-time employment. Dr. Becker did not specifically address whether appellant was partially disabled after she returned to work on that date.

Both Drs. Becker and Manfresca provided a description of appellant's employment injury and provided rationale for their respective findings based on their review of the medical evidence and findings on examination. The Board, therefore, finds a conflict in medical opinion regarding whether appellant sustained additional conditions causally related to or as a consequence of her March 3, 2017 employment injury.[15] Under section 8123(a) of FECA, OWCP must resolve this conflict by referring appellant, together with the case record and a statement of accepted facts, to an impartial medical specialist.[16] If the impartial medical specialist finds that she sustained additional conditions causally related to or as a consequence of her accepted employment injury, the specialist should address whether her employment injury caused any additional periods of disability. After such further development as deemed necessary, it shall issue a *de novo* decision.[17]

CONCLUSION

The Board finds that the case is not in posture for decision.

[13] The Board notes that OWCP has not accepted appellant's prior left shoulder injury and resulting surgery as employment related.

[14] Dr. Becker further advised that appellant was totally disabled from March 3 to June 23, 2018, when she returned to modified part-time employment. He noted that her work tolerance had increased after her return to work and that a month earlier she had resumed her regular employment full time. Based on Dr. Becker's findings, OWCP determined that appellant had no disability after June 23, 2018.

[15] *See C.N.*, Docket No. 19-0621 (issued September 10, 2019); *A.T.*, Docket No. 19-0294 (issued May 29, 2019).

[16] 5 U.S.C. § 8123(a); *C.W.*, Docket No. 18-1536 (issued June 24, 2019).

[17] In view of the Board's disposition of the issue of whether appellant sustained additional conditions causally related to or as a consequence of her employment injury, it is premature to address the issues of disability and the denial of her request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2019 and November 15, 2018 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: August 24, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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