

**United States Department of Labor
Employees' Compensation Appeals Board**

J.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Morganville, NJ, Employer**

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**Docket No. 11-1996
Issued: April 3, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 8, 2011 appellant filed a timely appeal of the June 28, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his consequential injury claim.¹ Pursuant to Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant sustained additional conditions, including cervical spine arthrosis for which surgery was recommended, as a consequence of his October 1, 2009 employment injuries.

¹ In a decision dated October 13, 2011, OWCP denied modification of the June 28, 2011 decision which found that appellant did not sustain cervical spine arthrosis for which surgery was required as a result of his accepted October 1, 2009 employment injuries. The Board and OWCP may not have concurrent jurisdiction over the same issue in a case. Consequently, the October 13, 2011 decision, issued while the Board had jurisdiction of the case, is null and void. *Douglas E. Billings*, 41 ECAB 880 (1990); *see also* 20 C.F.R. § 501.2(c)(3).

² 5 U.S.C. § 8101 *et seq.*

On appeal, appellant contends that the medical evidence of record is sufficient to establish that his current neck and left arm, shoulder and hand symptoms and need for neck surgery are causally related to his accepted injuries.

FACTUAL HISTORY

OWCP accepted that on October 1, 2009 appellant, then a 59-year-old rural carrier, sustained a left knee sprain, left shoulder sprain, neck sprain, left thumb sprain/contusion, localized primary osteoarthritis of the left hand and a torn medial meniscus of the left knee as a result of a motor vehicle accident.

On February 16, 2010 OWCP accepted that appellant sustained a recurrence of disability on January 28, 2010 due to authorized left hand surgery.

In an April 8, 2010 medical report, Dr. Keith M. Rinkus, an attending Board-certified orthopedic surgeon, listed a history that appellant underwent a C6-7 fusion to treat his upper extremity radiculopathy. He complained about significant pain in the left shoulder radiating into his left arm. Dr. Rinkus listed findings on physical examination and reviewed x-ray results. He advised that appellant had cervical spondylosis with stenosis and left-sided C5 radiculopathy. Dr. Rinkus ordered a magnetic resonance imaging (MRI) scan of the cervical spine. In an April 16, 2010 report, he advised that the MRI scan of the cervical spine showed a fusion at C5-6 and C6-7, considerable adjacent level disc disease that was worse at C4-5 with foraminal stenosis and central canal stenosis with effacement of the spinal cord and significant stenosis at C3-4. Dr. Rinkus diagnosed cervical adjacent level stenosis with left upper extremity radiculopathy at C5 and ordered a C4-5 transforaminal epidural steroid injection.

In an August 30, 2010 medical report, Dr. Jerome D. Rosman, a Board-certified orthopedic surgeon and OWCP referral physician, advised that appellant no longer had any residuals or disability causally related to the October 1, 2009 employment injuries. He found that appellant could perform his regular work duties with permanent restrictions related to his preexisting nonemployment-related conditions.

In a May 11, 2010 report, Dr. Michael A. Romello, a Board-certified physiatrist, listed findings on physical examination and diagnosed cervical spondylosis with stenosis and left-sided radiculopathy at C5. On May 21 and June 25, 2010 he treated appellant's cervical spondylosis, radiculopathy and degenerative disc disease with transforaminal epidural injections. On July 15, 2010 Dr. Romello reported findings on physical examination and diagnosed lumbar spondylosis and lumbosacral facet arthritis.

In an August 23, 2010 report, Dr. Rinkus listed findings on physical and x-ray examination. He advised that appellant had significant C3-4 and C4-5 arthrosis with disc osteophyte complex. Dr. Rinkus identified the previous fusion from C5, C6 and C7 with significant arthrosis at C7-T1. He noted some blunting of cervical lordosis, but no kyphotic deformity was seen. In reports dated September 17 and October 11, 2010, Dr. Rinkus listed findings on physical examination and results of a cervical MRI scan. He reiterated his prior diagnosis of cervical adjacent level stenosis with left upper extremity radiculopathy at C5. Dr. Rinkus noted that nonoperative therapies had failed and recommended cervical

decompression and fusion. In the October 11, 2010 report, he stated that the decision finding that appellant's current cervical condition was not causally related to the October 2009 employment incident was a nonsensical decision. Dr. Rinkus noted that appellant previously underwent cervical surgery in 1985 at the levels which were subjacent to the current levels of interest. The lower levels were successfully fused. Dr. Rinkus stated that it was a well-known phenomenon that there could be adjacent level stenosis and degeneration which remained asymptomatic most times. He advised that appellant was asymptomatic in his left upper extremity until the 2009 employment incident. After this time, appellant had considerable pain in his left upper extremity. Dr. Rinkus opined that there was a temporal relationship between the accepted incident and appellant's current symptoms. The fact that there was previous surgery to the levels below the level of interest was immaterial.

In a November 18, 2010 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective November 20, 2010 based on Dr. Rosman's August 30, 2010 medical opinion. It found that the medical evidence was insufficient to establish that his preexisting conditions were aggravated or accelerated by the accepted conditions.

By decision dated June 28, 2011, an OWCP hearing representative reversed the November 18, 2010 decision with regard to the termination of appellant's compensation benefits, finding that the statement of accepted facts reviewed by Dr. Rosman was incomplete, his responses to OWCP's questions regarding appellant's continuing employment-related residuals or disability were not clearly stated and his opinion was not supported by sufficient medical rationale. The hearing representative, however, affirmed the November 18, 2010 decision with regard to the finding that the medical evidence was insufficient to establish that appellant sustained cervical spine arthrosis as a consequence of his October 1, 2009 employment injuries.

LEGAL PRECEDENT

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.³ Regarding the range of compensable consequences of an employment-related injury, Larson 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 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. Thus, once the work-connected character of any condition is established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.⁴

³ *Albert F. Ranieri*, 55 ECAB 598 (2004).

⁴ A. Larson, *The Law of Workers' Compensation* § 10.01 (November 2000).

A claimant bears the burden of proof to establish a claim for a consequential injury.⁵ 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. Rationalized medical evidence is evidence, which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. 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.⁶

ANALYSIS

OWCP accepted that on October 1, 2009 appellant sustained an employment-related left knee sprain, left shoulder sprain, neck sprain, left thumb sprain/contusion, localized primary osteoarthritis of the left hand and a torn medial meniscus of the left knee. The Board finds that appellant has not submitted sufficient medical evidence to establish that his cervical spine arthritis and proposed surgery are a consequence of his accepted employment injuries.

Dr. Rinkus' reports listed findings on physical examination and diagnostic testing. He found that appellant had cervical spondylosis, cervical adjacent level stenosis with left upper extremity radiculopathy at C5 and significant C3-4 and C4-5 arthrosis with disc osteophyte complex. Dr. Rinkus recommended that appellant undergo cervical decompression and fusion. In an October 11, 2010 report, he opined that appellant's cervical symptoms were causally related to the accepted October 1, 2009 employment incident as he was asymptomatic prior to this incident. Dr. Rinkus noted that appellant's 1985 cervical surgery was performed at levels that were subjacent to the current levels of interest. He stated that it was a well-known phenomenon that there could be adjacent level stenosis and degeneration which remained asymptomatic most times. Dr. Rinkus stated that following the accepted incident appellant experienced considerable pain in his left upper extremity. The fact that appellant had no problems prior to the employment incident, without more by way of rationale, is insufficient to establish his claim. The Board finds that Dr. Rinkus' reports are of diminished probative value because he failed to provide sufficient medical rationale explaining how the accepted October 1, 2009 motor vehicle accident caused the current cervical injury and proposed surgery.⁷

Dr. Romello's reports found that appellant had cervical spondylosis with stenosis and left-sided C5 radiculopathy, lumbar spondylosis and lumbosacral facet arthritis. He treated the diagnosed cervical stenosis and left-sided radiculopathy at C5 with transforaminal epidural injections. Dr. Romello did not provide a medical opinion addressing whether the diagnosed

⁵ *J.J.*, Docket No. 09-27 (issued February 10, 2009).

⁶ *Charles W. Downey*, 54 ECAB 421 (2003).

⁷ *John F. Glynn*, 53 ECAB 562 (2002) (an opinion 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).

conditions were causally related to the October 1, 2009 employment injury.⁸ The Board finds, therefore, that his reports are insufficient to establish appellant's claim.

On appeal, appellant contends that the medical evidence of record is sufficient to establish that his current neck and left arm, shoulder and hand symptoms and the proposed neck surgery were caused by the October 1, 2009 employment injuries. As discussed above, he did not submit sufficiently rationalized medical evidence to establish that he sustained additional conditions which warranted surgery that were caused, aggravated or a consequence of the accepted injuries.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained additional conditions, including cervical spine arthrosis for which surgery was warranted, as a consequence of his October 1, 2009 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁸ The medical opinion to establish a claim 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. *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).