United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 12-1734**
	)	**Issued: February 7, 2013**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Ronkonkoma, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 9, 2012 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) merit decision dated February 23, 2012 denying his request to expand his claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish various physical conditions diagnosed by his treating physicians as causally related to his accepted July 31, 2004 employment injury.

On appeal, counsel contends that the medical evidence of record is sufficient to establish his claim.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case is has previously been before the Board. Appellant appealed from OWCP's April 5, 2006 decision, which accepted his claim for cervical strain with radiculopathy, left shoulder strain and temporary aggravation of herniated discs, but denied his request to include additional conditions. In a February 6, 2007 decision, the Board affirmed OWCP's decision, in part and set aside the decision as to its refusal to accept additional conditions, due to a conflict in medical opinion evidence.[2] In a February 11, 2008 order, the Board remanded the case to OWCP for proper issuance of its June 20, 2007 decision denying expansion of his claim.[3] In a decision dated March 16, 2009, the Board set aside the April 22, 2008 decision denying appellant's request to expand his claim. The Board found that there existed an unresolved conflict in medical opinion due to the insufficiency of the referee physician's report.[4] In an October 19, 2011 decision, the Board set aside OWCP's September 10, 2010 merit decision denying appellant's request to expand his claim, finding that the referee's opinion was insufficiently rationalized to resolve the conflict in medical opinion.[5] The case was remanded for a supplemental report from the impartial medical examiner, Dr. Warwick Green, a Board-certified orthopedic surgeon. The facts and the circumstances of the prior decisions are hereby incorporated by reference.

Pursuant to the Board's instructions, OWCP asked Dr. Green for a detailed supplemental report explaining how his examination findings supported his opinion that no conditions other than cervical disc disease, cervical radiculopathy and impingement syndrome of the left shoulder were causally related to appellant's July 31, 2004 incident. Dr. Green was asked specifically whether cervical muscle spasms or left shoulder effusion resulted from the accepted injury. He was asked to state whether he agreed or disagreed with the findings provided by appellant's treating physician and OWCP physicians and why. Dr. Green was instructed to address the opinion of Dr. Arnold M. Illman, a prior referee physician, that appellant's impingement syndrome had developed over time into adhesive capsulitis and to discuss the mechanics of the July 31, 2004 incident in relation to the conditions diagnosed by appellant's treating physician.

In a supplemental report dated November 17, 2011, Dr. Green opined that the mechanics of the accepted injury, which involved lifting heavy baggage, were consistent with cervical herniated discs and left shoulder impingement syndrome. He further opined, however, that hypertrophic changes of the acromioclavicular (AC) joint, lateral down sloping acromion abutting the supraspinatus and inferiorly extending acromial spur evidenced on magnetic resonance imaging (MRI) scan, were longstanding conditions, which preceded the accepted injury. Dr. Green stated that cervical muscle spasm and effusion are clinical signs, not diagnoses and therefore should be deleted. Internal derangement of the left shoulder was a catch-all phrase, which indicated that the diagnosis was not easily known. Based on the results of a November 4, 2007 scan of the left shoulder, which showed evidence of AC joint arthritis and impingement

[2] Docket No. 06-1328 (issued February 6, 2007).

[3] Docket No. 07-2305 (issued February 11, 2008).

[4] Docket No. 08-2016 (issued March 16, 2009).

[5] Docket No. 11-851 (issued October 19, 2011).

syndrome of the left shoulder, but no evidence of a partial thickness tear of the left shoulder rotator cuff, Dr. Green determined that a diagnosis of left rotator cuff tear was not causally related to the accepted incident.

After reviewing Dr. Illman's April 23, 2007 report, Dr. Green stated his belief that appellant did not suffer from adhesive capsulitis. He noted that Dr. Illman's findings, which reflected slight loss of internal rotation but full external rotation, were more consistent with impingement syndrome than adhesive capsulitis, in which both internal and external rotation are always diminished.

In a decision dated February 23, 2012, OWCP denied appellant's request to expand his claim to include internal derangement of the left shoulder, cervical muscle spasm, adhesive capsulitis, left shoulder effusion and partial thickness tear of the left shoulder based upon Dr. Green's referee opinion.

LEGAL PRECEDENT

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[6] Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[7]

Section 8123 of FECA provides that, 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.[8] When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if

[6] *Katherine Friday*, 47 ECAB 591 (1996).

[7] *John W Montoya*, 54 ECAB 306 (2003).

[8] 5 U.S.C. § 8123.

sufficiently well rationalized and based upon a proper factual background, must be given special weight.[9]

When OWCP obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, OWCP must secure a supplemental report from the specialist to correct the defect in his original report.[10] However, when the impartial specialist is unable to clarify or elaborate on his original report or if his supplemental report is also vague, speculative or lacking in rationale,

OWCP must submit the case record and a detailed statement of accepted facts to a second impartial specialist for the purpose of obtaining his rationalized medical opinion on the issue.[11]

ANALYSIS

In accordance with the Board's directive, OWCP asked Dr. Green to provide a supplemental report explaining how his examination findings supported his opinion that no conditions other than cervical disc disease, cervical radiculopathy and impingement syndrome of the left shoulder were causally related to appellant's July 31, 2004 incident. The Board finds, however, that Dr. Green's reports are insufficiently rationalized to resolve the conflict in medical opinion. Therefore, this case is not in posture for a decision and must be remanded to OWCP for further development of the medical evidence.

OWCP asked Dr. Green specifically whether cervical muscle spasms or left shoulder effusion resulted from the accepted injury. Dr. Green stated that cervical muscle spasm and effusion were clinical signs, not diagnoses and therefore should be "deleted." He did not, however, respond to the question as to whether appellant experienced muscle spasms or effusion, nor did he explain whether these clinical signs were indicative of a diagnosable condition. Instead, Dr. Green merely repeated his previously-stated, unsupported opinion.

OWCP asked Dr. Green to state whether he agreed or disagreed with the findings provided by appellant's treating physician and OWCP physicians and why. Dr. Green stated that internal derangement of the left shoulder was a catch-all phrase, which implied that the diagnosis was not easily known and should be deleted. He did not, however, address the examination findings related to the derangement diagnosis or indicate what tests would be necessary to ascertain a correct diagnosis. Therefore, Dr. Green's report is of limited probative value in this regard.

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[9] *James F. Weikel*, 54 ECAB 660 (2003); *Beverly Grimes*, 54 ECAB 543 (2003); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Daniel F. O'Donnell. Jr*., 54 ECAB 456 (2003); *Phyllis Weinstein (Elliot H. Weinstein)*, 54 ECAB 360 (2003); *Bernadine P. Taylor*, 54 ECAB 342 (2003); *Karen L. Yeager*, 54 ECAB 317 (2003); *Barry Neutuch*, 54 ECAB 313 (2003); *David W Picken*, 54 ECAB 272 (2002).

[10] *Raymond A. Fondots*, 53 ECAB 637, 641 (2002); *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988); *Ramon K. Ferrin, Jr*., 39 ECAB 736 (1988).

[11] *Nancy Keenan*, 56 ECAB 687 (2005); *Roger W. Griffith*, 51 ECAB 491 (2000); *Talmadge Miller*, 47 ECAB 673 (1996).

Dr. Green was instructed to address Dr. Illman's opinion that appellant's impingement syndrome had developed over time into adhesive capsulitis. After reviewing Dr. Illman's April 23, 2007 report, Dr. Green stated his belief that appellant did not suffer from adhesive capsulitis. He noted that Dr. Illman's findings, which reflected slight loss of internal rotation but full external rotation, were more consistent with impingement syndrome than adhesive capsulitis, in which both internal and external rotation are always diminished. Dr. Green did not discuss his own examination findings as they related to Dr. Illman's diagnosis, but rather speculated based on Dr. Illman's four-year-old report. Without further explanation, his opinion is of diminished probative value.

Dr. Green determined that a diagnosis of left rotator cuff tear was not causally related to the accepted incident based on the results of a November 4, 2007 MRI scan of the left shoulder, which showed evidence of AC joint arthritis and impingement syndrome of the left shoulder, but no evidence of a partial thickness tear of the left shoulder rotator cuff. He did not address Dr. Harshad C. Bhatt's August 4, 2005 diagnosis of partial tear of the supraspinatus left shoulder. Dr. Green's opinion is therefore of diminished probative value.

Dr. Green's November 17, 2011 supplemental report did not cure the deficiencies of his August 13 and 30, 2011 reports. He did not fully respond to OWCP's questions or fully explain the basis for his opinions. As Dr. Green's report is not sufficiently rationalized, it is of limited probative value.

OWCP referred appellant to Dr. Green for the specific purpose of resolving the conflict in medical evidence. For reasons stated above, the Board finds that his reports are insufficient to resolve the conflict. Therefore, the case will be remanded to OWCP for referral to another appropriate impartial medical specialist. After such further development as OWCP deems necessary, an appropriate decision should be issued.

CONCLUSION

The Board finds that this case is not in posture for a decision, as there exists an unresolved conflict in the medical opinion evidence as to whether appellant's current conditions of cervical muscle spasm, internal derangement of the left shoulder, partial thickness tear of the left shoulder and effusion of the left shoulder are causally related to the accepted July 31, 2004 injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 23, 2012 is set aside and remanded for action consistent with the terms of this decision.

Issued: February 7, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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