

ISSUE

The issue is whether appellant met his burden of proof to establish an April 23, 2015 left upper extremity injury consequential to the accepted October 29, 2009 right upper extremity employment injuries.

FACTUAL HISTORY

OWCP accepted that on October 29, 2009 appellant, then a 46-year-old clerk, slipped on a wet floor and held onto a bookcase to prevent himself from falling, causing a right wrist sprain, right shoulder sprain, and a right rotator cuff tear. Appellant stopped work after his tour ended on October 29, 2009. He returned to part-time, limited-duty employment commencing December 21, 2009. OWCP paid wage-loss compensation benefits for the remaining hours through May 27, 2010.

On May 28, 2010 appellant underwent authorized arthroscopic right shoulder biceps tenodesis, labral debridement, and rotator cuff repair, performed by Dr. Glen Ross, an attending Board-certified orthopedic surgeon. OWCP paid appellant wage-loss compensation for temporary total disability commencing May 28, 2010. It paid compensation for total disability on the periodic rolls commencing August 28, 2010.

On January 25, 2011 appellant underwent authorized arthroscopic shaving of the right wrist with repair of the right triangular fibrocartilage complex and debridement of a radial tear, performed by Dr. Bruce Leslie, an attending Board-certified orthopedic surgeon. He participated in postoperative physical therapy through April 2011.

On June 28, 2011 Dr. Leslie performed authorized right ulnar shortening with an ulnar shortening plate to address right ulnar impaction syndrome. Appellant remained off work. He participated in postoperative physical therapy. OWCP paid appellant wage-loss compensation for total disability on the periodic rolls through June 29, 2013.

To assess the nature and extent of appellant's condition, OWCP obtained a second opinion on September 14, 2012 from Dr. Gilbert Shapiro, a Board-certified orthopedic surgeon, who opined that appellant could perform full-time modified duty.

In a November 26, 2012 report, Dr. Leslie found that appellant remained totally disabled from work. In a March 13, 2013 report, he released appellant to part-time, modified duty for four hours a day.⁴

Appellant returned to limited-duty work for two hours a day on June 26, 2013. OWCP paid compensation on the supplemental rolls for the remaining hours effective June 30, 2013. Appellant again stopped work in July 2013. OWCP paid wage-loss compensation for total disability commencing August 10, 2013.

⁴ On June 14, 2013 appellant underwent a left hip total arthroplasty.

In an April 23, 2015 report, Dr. Ross found that based on objective findings of a clinical examination that day, appellant had attained maximum medical improvement (MMI) of the right shoulder. He noted that appellant had a “probable ongoing left shoulder rotator cuff tear,” and would benefit from a “left shoulder rotator cuff evaluation and MRI [magnetic resonance imaging] at some point.”

In an April 29, 2015 report, Dr. Leslie found that appellant had attained MMI for his right wrist.⁵

In a May 21, 2015 letter, OWCP noted that appellant had also filed a traumatic injury claim (Form CA-1) under OWCP File No. xxxxxx768 for left upper extremity, head, neck, and lumbar injuries sustained in an April 23, 2015 motor vehicle accident.⁶

In a July 9, 2015 letter, counsel contended that appellant sustained consequential left upper extremity injuries in an April 23, 2015 motor vehicle accident while driving to an appointment with Dr. Ross for evaluation of the accepted right shoulder injuries.

Appellant submitted April 23, 2015 hospital emergency room records documenting appellant’s evaluation by a physician assistant for a “low speed lateral impact MVC [motor vehicle collision] on passenger side,” with onset of left shoulder and arm pain. The physician assistant diagnosed a left shoulder strain. An August 12, 2015 MRI scan of appellant’s left shoulder demonstrated a chronic rotator cuff tear with muscle atrophy, and a biceps tendon tear.

In a March 17, 2016 report, Dr. Ross opined that an April 2015 motor vehicle accident accelerated appellant’s preexisting left shoulder condition because he had done well prior to the collision, but experienced increased symptoms afterward. In an April 1, 2016 report, he related appellant’s account of a left shoulder injury sustained in a “motor vehicle accident while coming to a postoperative appointment for his right shoulder.”⁷

Counsel provided an April 18, 2016 letter in which he contended that Dr. Ross’ reports were sufficient to demonstrate a causal relationship between the April 23, 2015 motor vehicle accident and the deterioration of appellant’s left shoulder condition.

On June 22, 2016 OWCP requested that appellant complete an enclosed notice of recurrence (Form CA-2a) to claim any increased disability caused by the April 23, 2015 motor vehicle accident.

⁵ On May 1, 2015 appellant filed a claim for compensation (Form CA-7) for intermittent periods of disability from April 13 to May 1, 2015, including attendance at April 23 and 29, 2015 medical appointments for treatment of the accepted right arm injuries. OWCP paid wage-loss compensation for the two appointments. Appellant returned to part-time work in May 2015, then to full-time, modified duty. OWCP paid wage-loss compensation for intermittent periods of disability.

⁶ Under OWCP File No. xxxxxx768, OWCP denied the claim by decision dated June 24, 2015, finding that appellant failed to establish that the April 23, 2015 motor vehicle accident occurred in the performance of duty or was otherwise connected to his federal employment.

⁷ Counsel repeated this contention in a June 16, 2016 letter.

In response, counsel submitted a June 29, 2016 letter, in which he acknowledged that appellant did not sustain a recurrence of disability and that the April 23, 2015 motor vehicle accident did not occur in the performance of duty. Rather, appellant's injuries "flowed from the accident of October 29, 2009" as he was traveling to an appointment for treatment of accepted conditions. Counsel requested in July 8 and November 10, 2016 letters that OWCP simply accept the left shoulder condition as compensable.

In a December 5, 2016 letter, OWCP notified appellant that it would accept counsel's June 29, 2016 letter as a claim for a consequential injury, as opposed to the requested notice of recurrence (Form CA-2a). It requested that he submit a factual statement addressing whether he had been directed by the employing establishment to attend the April 23, 2015 medical appointment, describe the points of his travel on April 23, 2015, and specify if the collision occurred before or after the appointment. OWCP also requested a medical report from his attending physician explaining "how and whether the claimed left shoulder injury [was] directly related to the April 23, 2015 motor vehicle accident." It afforded appellant 30 days to provide such evidence.

In response, appellant submitted Dr. Leslie's October 24, 2011 report regarding continued right wrist symptoms.

By decision dated January 18, 2017, OWCP denied appellant's claim for consequential injury, finding that the medical evidence of record failed to demonstrate that any weakness or impairment from the accepted right arm conditions caused or aggravated a left shoulder condition. It further found that he provided insufficient factual evidence about the circumstances of the April 23, 2015 collision, which diminished the reliability of his claim.

LEGAL PRECEDENT

When 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.⁸ To establish causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting causal relationship.⁹ Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence. A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.¹⁰ Medical rationale includes a physician's detailed opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the 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 specific

⁸ C.W., Docket No. 16-0858 (issued April 3, 2017); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁹ *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

¹⁰ *T.F.*, 58 ECAB 128 (2006).

employment activity or factors identified by the claimant.¹¹ 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 caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹²

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, 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 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.¹³

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a consequential left upper extremity condition as a result of his accepted October 29, 2009 right upper extremity conditions.

OWCP accepted that appellant sustained a right wrist sprain, right shoulder sprain, and right rotator cuff tear while in the performance of duty on October 29, 2009 when he grabbed onto a bookcase to prevent himself from falling on a wet floor. Subsequently, appellant sustained left upper extremity injuries in a motor vehicle accident on his way to a medical appointment on April 23, 2015. He has the burden of proof to establish that the April 23, 2015 motor vehicle accident and resulting left arm injuries were causally related to his accepted October 29, 2009 employment injuries.¹⁴

It is an accepted principle of workers' compensation law that a second, nonindustrial injury is compensable if it is the direct and natural result of an earlier compensable injury. Where an accident is sustained as a consequence of disability residual to a previous industrial injury, it is deemed because of the chain of causation to arise out of and in the course of employment. However, when the accident is nonindustrial in nature, it is an intervening cause breaking the chain of causation from the accepted injury.¹⁵

¹¹ *A.D.*, 58 ECAB 149 (2006).

¹² *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

¹³ Larson, *The Law of Workers' Compensation* § 1300; *P.J.*, Docket No. 17-0570 (issued October 26, 2017); *K.S.*, Docket No. 16-0404 (issued April 11, 2016).

¹⁴ *C.W.*, *supra* note 8.

¹⁵ *Howard S. Wiley*, 7 ECAB 126 (1954). *See also Robert W. Meeson*, 44 ECAB 834 (1993) (following an accepted lumbar strain, the claimant filed a recurrence of disability when he experienced similar symptoms after a nonemployment-related motor vehicle accident; the Board affirmed OWCP's denial of the recurrence claim, finding that the triggering episode was the nonemployment-related automobile accident and not due to the "natural progression" of his prior back condition).

In a letter dated June 29, 2016, counsel acknowledged that the April 23, 2015 collision did not occur in the performance of appellant's regular or specially assigned duties. Rather, he contended that appellant sustained a consequential condition as the motor vehicle accident occurred while he drove to a medical appointment for treatment of the October 29, 2009 accepted employment-related right upper extremity injuries. The Board finds, however, that the evidence of record demonstrates that the April 23, 2015 collision was nonindustrial. It is an intervening cause, breaking the pathophysiologic flow from the accepted October 29, 2009 employment-related right upper extremity injuries.¹⁶

The Board notes that appellant failed to submit a detailed description of the April 23, 2015 motor vehicle accident as OWCP had requested on December 15, 2016. Although appellant alleged that the accident occurred on his way to the medical appointment with Dr. Ross for treatment of the October 29, 2009 employment-related right upper extremity injuries, he did not specify the time of the accident or the time of the appointment. Additionally, despite appellant's assertion that the accident occurred shortly before Dr. Ross examined him on April 23, 2015, Dr. Ross made no mention of a motor vehicle accident or any new left upper extremity complaints in his April 23, 2015 report. Therefore, appellant has failed to meet his burden of proof to establish the claimed consequential injury.

On appeal counsel contends that the April 23, 2015 injuries should be considered consequential as they were sustained while traveling to a medical appointment for treatment of the accepted October 29, 2009 employment-related right upper extremity conditions. As set forth above, the April 23, 2015 motor vehicle accident is an intervening cause and not due to the "natural progression" of his condition.

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 appellant failed to meet his burden of proof to establish an April 23, 2015 left upper extremity injury consequential to accepted October 29, 2009 right upper extremity employment injuries.

¹⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 18, 2017 is affirmed.

Issued: January 26, 2018
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