

On appeal, appellant contends that he is entitled to medical treatment for his current conditions.

FACTUAL HISTORY

OWCP accepted that on April 19, 2010 appellant, then a 43-year-old aircraft overhaul and repair supervisor, sustained a lumbar strain when he fell as he tried to sit down in a chair at work.³

In referral forms dated June 2 and September 15, 2010, a physician with an illegible signature ordered physical therapy to treat appellant's lumbar radiculopathy.

In a progress note and reports, physical therapists, addressed the treatment of appellant's lumbar radiculopathy from August 18 through September 10, 2010.

In an undated prescription, Dr. Mark C. Adrian, a Board-certified internist, advised that appellant was evaluated for lumbar radiculopathy.

In a January 7, 2011 medical report, Dr. Lance L. Altenau, a Board-certified neurosurgeon, noted appellant's continued complaint of back and radicular leg symptoms. He had no focal deficit. A prior magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated a bulging disc at L5-S1 with foraminal narrowing at L4-5 and L5-S1. Also, on January 7, 2011 Dr. Altenau prescribed physical therapy to treat appellant's herniated nucleus pulposus.

An unsigned report dated April 29, 2011 contained the typed name of Dr. Betsy A. Holland, a Board-certified radiologist, and stated that a lumbar MRI scan demonstrated minor right and mild left neural foraminal narrowing. There was also mild developmental central canal stenosis at L3 and L4, a mild annular bulge of the intervertebral discs from L2-3 through L4-5 with a minor annular bulge of the L5-S1 intervertebral disc and mild L2-3 and L3-4 central canal stenosis predominantly on a developmental basis. In conjunction with developmental central canal stenosis with short pedicles, moderate right L3-4 neural foraminal narrowing was demonstrated.

An August 1, 2011 report contained the typed name of Dr. Donna Hoghooghi, a Board-certified radiologist, and stated that an MRI scan of the cervical spine showed multilevel severe degenerative spondylosis identified on the basis of disc osteophyte complex and uncovertebral hypertrophy resulting in severe foraminal narrowing on the right at C3-4 and C4-5. Moderate-to-severe foraminal narrowing was identified on the left at C3-4 and C4-5 and bilaterally at C7-T1. Moderate foraminal narrowing was identified on the right at C5-6 and C6-7. There was no evidence of canal stenosis or cord signal abnormality within the cervical spine. Disc osteophyte complex and ligamentum flavum thickening at T2-3 resulted in mild-to-moderate canal stenosis without cord signal abnormality.

³ Appellant voluntarily retired from the employing establishment effective July 1, 2011.

In an April 27, 2011 report, Dr. Scott P. Leary, a neurological surgeon, obtained a history of the 2010 employment injury and appellant's medical background. He noted his low back and bilateral lower extremity symptoms. Dr. Leary listed essentially normal findings on physical examination except with regards to the lumbar spine which was tender to palpation midline and over the paraspinal muscles and had limited range of motion with pain and the lower extremities which had decreased sensation. He advised that lumbar x-rays performed on April 27, 2011 showed no fracture. Dr. Leary recommended a lumbar MRI scan without contrast.

By letter dated November 8, 2011, OWCP advised appellant that the evidence submitted was insufficient to establish that his claimed stenosis and spondylosis were caused by his accepted April 19, 2010 employment injury. It addressed the medical evidence he needed to submit to establish his claim. Appellant was afforded 30 days to submit such evidence. He did not respond.

In a December 29, 2011 decision, OWCP denied appellant's claim, finding that the medical evidence was insufficient to establish that his claimed cervical and lumbar conditions were caused by or resulted from the accepted April 19, 2010 condition. It advised that medical treatment was not authorized and prior authorization, if any, was terminated.

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.⁴ 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.⁵

A claimant bears the burden of proof to establish a claim for a consequential injury.⁶ 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

⁴ *Albert F. Ranieri*, 55 ECAB 598 (2004).

⁵ A. Larson, *The Law of Workers' Compensation* § 10.01 (November 2000).

⁶ *J.J.*, Docket No. 09-27 (issued February 10, 2009).

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.⁷

ANALYSIS

OWCP accepted that on April 19, 2010 appellant sustained an employment-related lumbar strain. The Board finds that he has not submitted sufficient medical evidence to establish that his additional lumbar and cervical conditions are a consequence of his accepted employment injury.

Dr. Adrian's prescription found that appellant had lumbar radiculopathy. He did not provide a medical opinion addressing whether the diagnosed condition was a consequence of the April 19, 2010 employment injury. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸ Likewise, Dr. Altenau, in a January 7, 2011 report and prescription, stated that appellant had a bulging disc at L5-S1 with foraminal narrowing at L4-5 and L5-S1 and herniated nucleus pulposus, respectively, but he did not offer a specific opinion as to whether the diagnosed conditions were caused by the accepted employment injury. The Board finds, therefore, that the prescriptions and report of Dr. Adrian and Dr. Altenau are insufficient to establish appellant's claim.

Dr. Leary's report listed essentially normal findings on physical and x-ray examination with the exception of the lumbar spine which had tenderness to palpation midline and over the paraspinal muscles and limited range of motion with pain and the lower extremities which had decreased sensation. He did not provide a specific diagnosis or provide an opinion addressing whether any diagnosed condition was a consequence of the April 19, 2010 employment injury. The Board finds, therefore, that Dr. Leary's report is insufficient to establish appellant's claim.⁹

The referral forms which contained an illegible signature and unsigned reports which contained the typed names of Dr. Holland and Dr. Hoghooghi lack probative medical value as the author(s) cannot be identified as a physician.¹⁰

On appeal, appellant contended that he is entitled to medical treatment for his current conditions. The Board has held that, while OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of such conditions.¹¹ Because appellant did not submit sufficiently rationalized medical evidence to establish that he sustained additional conditions that were caused, aggravated or a consequence of the accepted injury he is not entitled to medical

⁷ *Charles W. Downey*, 54 ECAB 421 (2003).

⁸ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *Id.*

¹⁰ *See Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹¹ *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

treatment for the effects thereof. He submitted new evidence after issuance of the December 29, 2011 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.¹²

However, appellant may submit new evidence or argument as part of 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 sustained additional lumbar and cervical conditions as a consequence of his April 19, 2010 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 29, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹² 20 C.F.R. § 501.2(c)(1).