

ISSUE

The issue is whether appellant has met his burden of proof to establish that the acceptance of his claim should be expanded to include a December 15, 2017 right shoulder injury sustained as a consequence of his accepted May 19, 2009 employment injury.

FACTUAL HISTORY

On May 20, 2009 appellant, then a 42-year-old painter, filed a traumatic injury claim (Form CA-1) alleging that on May 19, 2009 he sustained injury to his neck and back when he was driving a work vehicle and another vehicle hit the front right passenger door of his vehicle while he was in the performance of duty.³ OWCP accepted his claim for neck sprain, sprain of left shoulder/left upper arm (including acromioclavicular region), lumbar sprain, bilateral sacrospinatus ligament sprains, and left knee contusion.⁴ Appellant stopped work on May 19, 2009, but returned to limited-duty work without wage loss shortly thereafter.

The findings of May 20, 2009 x-rays of appellant's lumbar spine contained an impression of severe degenerative disc disease at L5-S1 with vacuum disc phenomenon and no acute bony injuries. Cervical spine x-rays from the same date revealed degenerative disc changes and right neural fronting narrowing at C5-6 and C6-7 with no acute bony injuries. The findings of May 25, 2009 ultrasound testing of appellant's left shoulder were normal.

Appellant stopped work on September 30, 2010 and OWCP paid him wage-loss compensation for disability from work on the supplemental rolls commencing October 2, 2010.⁵ He was terminated from the employing establishment effective December 27, 2010 and retired on disability effective August 4, 2012. Appellant last received wage-loss compensation for disability from work on August 25, 2012.

On November 11, 2014 Dr. Arthur W. Wardell, a Board-certified orthopedic surgeon, performed OWCP-authorized left shoulder surgery, including arthroscopic debridement of a rotator cuff tear and arthroscopic acromioplasty.

In an April 22, 2017 report, Dr. James Schwartz, a Board-certified orthopedic surgeon serving as an OWCP referral physician, indicated that appellant's pain complaints upon physical

³ OWCP assigned the claim File No. xxxxxx222.

⁴ OWCP had previously accepted, under OWCP File No. xxxxxx482, that on October 23, 2007 appellant hit his left knee in a fan room while in the performance of duty and sustained synovitis/tenosynovitis of the left lower leg and several left knee conditions, including sprains of the medial and lateral collateral ligaments, plica syndrome, internal derangement, and medial meniscus tear. Appellant underwent OWCP-authorized left knee surgeries for these conditions, including arthroscopy with shaving of articular cartilage on December 30, 2008 and arthroscopy with synovectomy on March 26, 2013. From January 3 through April 17, 2009, OWCP paid him wage-loss compensation for disability from work on the supplemental rolls. Appellant returned to limited-duty work for the employing establishment on April 18, 2009.

⁵ OWCP paid appellant wage-loss compensation for disability from work on the periodic rolls commencing February 13, 2011.

examination were nonphysiologic and that his subjective complaints were far in excess of objective findings. He opined that appellant's physical examination was "too bizarre for any diagnosis."

In a July 18, 2017 report, Dr. Beth M. Winkle, Board-certified in family medicine, noted that appellant complained of low back pain which radiated down into his legs with intermittent numbness and tingling. Appellant also reported having swelling in his extremities, but no weakness. Dr. Winkle indicated that, upon physical examination, there was no tenderness to palpation of the muscles of the sacroiliac region. She diagnosed degeneration of lumbar intervertebral discs, neuralgia, low back pain, and neck pain.

In a December 18, 2017 report, Dr. Wardell indicated that appellant presented complaining of pain and stiffness in his left knee. He noted that, upon examination of the left knee, appellant had medial joint line tenderness, but there was good stability of the knee.

In a February 19, 2018 attending physician's report (Form CA-20), Dr. Wardell listed the date of injury as May 19, 2009⁶ and diagnosed left knee contusion, bilateral sacroiliac joint sprains/strains, left shoulder sprain/strain, cervical spine sprain, and dorsolumbar spine sprain. He checked a box marked "Yes" to indicate that the diagnosed conditions were caused or aggravated by an employment activity and found that appellant was totally disabled from September 30, 2010 through March 20, 2018. In a February 19, 2018 duty status report (Form CA-17), Dr. Wardell listed the date of injury as May 19, 2009, provided a diagnosis of left shoulder sprain, and indicated that appellant was totally disabled from September 30, 2010 through March 20, 2018.

Dr. Wardell also produced narrative reports in 2018 which focused on his treatment of appellant's left knee condition. In a February 28, 2018 report, he noted that appellant returned for a recheck of his left knee and diagnosed acute internal derangement of the left knee. Dr. Wardell later produced similar reports, including those dated March 28, June 22, September 14, and November 14, 2018.

In a December 6, 2018 Form CA-20 report, Dr. Wardell listed the date of injury as May 19, 2009 and diagnosed left knee contusion, bilateral sacroiliac joint sprains/strains, left shoulder sprain/strain, cervical spine sprain, and dorsolumbar spine sprain. He found that appellant was totally disabled from September 30, 2010 through December 13, 2018. On December 13, 2018 Dr. Wardell produced a similar Form CA-20 report, but he listed the period of total disability as September 30, 2010 through February 13, 2019. In a December 13, 2018 Form CA-17 report, he listed the date of injury as May 19, 2009, provided clinical findings of cervical, lumbar, and left shoulder sprains, and indicated that appellant was totally disabled from September 30, 2010 through February 13, 2019.⁷

On January 18, 2019 an official from appellant's congressional office telephoned OWCP and requested that it expand the accepted conditions in appellant's case to include a right shoulder

⁶ Dr. Wardell checked a box marked "Yes" and added the notation, "[October 23, 2007]," to indicate that appellant had a prior injury.

⁷ Appellant also submitted November 20 and December 13, 2018 reports in which Dr. Wardell diagnosed sprain of ligaments of the cervical spine, left shoulder sprain, and sprain of ligaments of the lumbar spine.

condition. On that date, the congressional official faxed a January 14, 2019 letter to OWCP in which appellant noted that Dr. Wardell had been treating him for a lower back injury since May 19, 2009. Appellant indicated that his back gave out and he fell down “all the time” such that he hurt his right shoulder. He advised that Dr. Wardell was trying to have a right shoulder condition added to the accepted conditions of his workers’ compensation claim. The official also faxed a September 13, 2018 report from Dr. Wardell who advised that he was enclosing his office notes regarding appellant’s right shoulder injury. He indicated that appellant reported he injured his right shoulder when his low back gave out and noted, “Since his low back injury is due to a work injury, it is my opinion to a reasonable degree of medical certainty that [appellant’s] right shoulder symptoms and treatment for his right shoulder is [sic] a consequence of his work-related low back injury.”

In a January 18, 2019 development letter, OWCP requested that appellant submit additional evidence in support of his claim to expand the conditions accepted by OWCP, including a physician’s opinion supported by a medical explanation as to how the claimed consequential injury of the right shoulder “is consequential to your sprain of back, lumbar region, accepted work-related condition.”⁸ It provided a questionnaire for his completion which posed questions regarding the relationship between his claimed consequential condition and the accepted May 19, 2009 employment injury. OWCP afforded appellant 30 days to respond.

Appellant subsequently submitted a December 19, 2017 report from Dr. Wardell who noted that appellant reported that he fell on December 15, 2017 and that “[h]is legs gave out due to back pain and he fell onto his outstretched right hand, injuring his right shoulder.” Dr. Wardell noted that the findings of a December 19, 2017 ultrasound test of appellant’s right shoulder were normal and that x-rays taken on that date showed no fracture/dislocation and the existence of an acromial spur in the shoulder. Upon examination, appellant had tenderness over the right bicipital groove and right lateral acromion, and right shoulder impingement testing was positive. Under the heading “assessment,” Dr. Wardell noted, “[s]prain of right shoulder, unspecified shoulder sprain type, conseq[ue]ntial to low back injury.” Under the heading “provisional diagnosis,” he indicated “[r]ight shoulder sprain consequential to low back injury.” Dr. Wardell noted that he injected appellant’s right subdeltoid bursa with steroids and indicated that appellant would participate in physical therapy.

In a January 23, 2018 report, Dr. Karl F. Bowman, Jr., a Board-certified orthopedic surgeon associated with Dr. Wardell, diagnosed sprain of the right shoulder consequential to low back injury with an onset date of December 15, 2017.

In reports dated February 21, March 21, April 12, May 11, June 12, July 10, August 10, and September 11, 2018, Dr. Wardell diagnosed sprain of the right shoulder consequential to low back injury with an onset date of December 15, 2017. In several of these reports, he noted that

⁸ OWCP noted that a recurrence of disability might stem from a return or increase in disability due to an accepted consequential injury.

appellant had a positive impingement test of the right shoulder.⁹ On October 19, 2018 Dr. Amanda L. Weller, a Board-certified orthopedic surgeon associated with Dr. Wardell, diagnosed sprain of the right shoulder consequential to low back injury with an onset date of December 15, 2017. In reports dated November 19, 2018, and January 4, 10, and 21, and February 8, 2019, Dr. Wardell diagnosed sprain of the right shoulder joint, tear of the right glenoid labrum, lesion of the superior glenoid labrum, arthritis of the right acromioclavicular joint, strain of the right rotator cuff capsule, and strain of the muscles and tendons of the rotator cuff of right shoulder. He noted that all these conditions had an onset date of December 15, 2017. The January 4, 2019 report indicated that appellant presented for a preoperative examination and the January 10, 2019 report advised that was status post right shoulder surgery, including acromioplasty, rotator cuff tear debridement, labral tear excision, and bursectomy.¹⁰

In August 6 and 27, 2018 Form CA-20 reports, Dr. Wardell listed the date of injury as May 19, 2009 and diagnosed left knee contusion, bilateral sacroiliac joint sprains/strains, left shoulder sprain/strain, cervical spine sprain, and dorsolumbar spine sprain. In the August 6, 2018 report, he found that appellant was totally disabled from September 30, 2010 through August 27, 2018 and, in the August 27, 2018 report, he found that he was totally disabled from September 30, 2010 through September 25, 2018. In August 6 and 27, 2018 Form CA-17 reports, Dr. Wardell listed the date of injury as May 19, 2009 and provided a diagnosis due to injury of left shoulder sprain. In the August 6, 2018 report, he found that appellant was totally disabled from September 30, 2010 through August 27, 2018 and, in the August 27, 2018 report, he found that he was totally disabled from September 30, 2010 through September 25, 2018.

In an October 18, 2018 Form CA-20 report, Dr. Wardell listed the date of injury as May 19, 2009 and diagnosed left knee contusion, bilateral sacroiliac joint sprains/strains, left shoulder sprain/strain, cervical spine sprain, and dorsolumbar spine sprain. He found that appellant was totally disabled from September 30, 2010 through November 15, 2018. In an October 18, 2018 Form CA-17, Dr. Wardell listed the date of injury as May 19, 2009, provided a diagnosis due to injury of left shoulder sprain, and indicated that appellant was totally disabled from September 30, 2010 through November 15, 2018.

In a February 13, 2019 Form CA-17 report, Dr. Wardell listed the date of injury as May 19, 2009, provided findings of cervical, lumbar, and left shoulder sprains, and noted that appellant was totally disabled from September 30, 2010 through April 13, 2019. In a February 27, 2019 Form CA-17 report, he listed the date of injury as May 19, 2009, provided findings of cervical, lumbar, and left shoulder sprains, and noted that appellant was totally disabled from September 30, 2010 through April 11, 2019. In a February 27, 2019 Form CA-20 report, Dr. Wardell listed the date of injury as May 19, 2009 and diagnosed left knee contusion, bilateral sacroiliac joint

⁹ Appellant also submitted the findings of a March 31, 2018 magnetic resonance imaging (MRI) scan of the right shoulder which showed mild supraspinatus and infraspinatus tendinopathy, and moderate acromioclavicular joint osteoarthritis.

¹⁰ The case record does not contain a copy of the surgery report. Appellant also submitted January 11, February 13 and 27, and April 11, 2019 reports in which Dr. Wardell collectively diagnosed sprain of ligaments of the cervical spine, left shoulder sprain, left knee contusion, and sprain of ligaments of the lumbar spine.

sprains/strains, left shoulder sprain/strain, cervical spine sprain, and dorsolumbar spine sprain. He found that appellant was totally disabled from September 30, 2010 through April 11, 2019.

In a March 9, 2019 letter, Dr. Wardell advised that reference should be made to his September 13, 2018 letter and he noted that he had treated appellant for a right shoulder injury. He indicated that appellant had an employment-related low back injury and that he reported experiencing giving-way episodes of his low back “as a result of the work injury.” Dr. Wardell noted that, as described in his December 19, 2017 report, appellant reported falling when his legs gave way due to his back pain, falling on his outstretched right hand, and “incurring a right shoulder sprain consequential to his low back injury.” Appellant continued to be seen for his right shoulder problems and an MRI scan revealed supraspinatus and infraspinatus tendinopathy. Dr. Wardell noted that right shoulder arthroscopy in January 2019 revealed a partial tear of the rotator cuff, subdeltoid bursitis, and a labral tear, which he maintained were, to a reasonable degree of medical certainty, due to his May 19, 2009 employment injury.

Appellant also submitted March 13 and 28, 2019 reports in which Dr. Wardell diagnosed acute internal derangement of the left knee.

By decision dated April 23, 2019, OWCP found that appellant had not met his burden of proof to establish that the acceptance of his claim should be expanded to include additional conditions suffered as a consequence of the accepted May 19, 2009 employment injury. It determined that appellant had not submitted sufficient rationalized medical evidence in support of his consequential injury claim.¹¹

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.¹²

The claimant bears the burden of proof to establish a claim for a consequential injury.¹³ As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship. 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.¹⁴

¹¹ OWCP noted that, because appellant had not established a consequential right shoulder injury as alleged, he had not established a recurrence of disability causally related to his accepted May 19, 2009 employment injury.

¹² *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

¹³ *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

¹⁴ *K.W.*, Docket No. 18-0991 (issued December 11, 2018).

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁵ 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.¹⁶

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.¹⁷ 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.¹⁸ When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own conduct.¹⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include a December 15, 2017 right shoulder injury sustained as a consequence of his accepted May 19, 2009 employment injury.

In support of his consequential injury claim resulting from the May 19, 2009 employment injury, appellant submitted a December 19, 2017 report from Dr. Wardell who noted that appellant reported that he fell on December 15, 2017 and that “[h]is legs gave out due to back pain and he fell onto his outstretched right hand, injuring his right shoulder.” Dr. Wardell noted that the findings of a December 19, 2017 ultrasound test of appellant's right shoulder were normal and that x-rays taken on that date showed no fracture/dislocation and the existence of an acromial spur in the shoulder. Upon examination, appellant had tenderness over the right bicipital groove and right lateral acromion, and right shoulder impingement testing was positive. Under the heading “assessment,” Dr. Wardell noted, “[s]prain of right shoulder, unspecified shoulder sprain type, consequ[ential] to low back injury.” Under the heading “provisional diagnosis,” he indicated “[r]ight shoulder sprain consequential to low back injury.”

The Board finds that Dr. Wardell's December 19, 2017 report is of limited probative value with regard to appellant's claim for a consequential injury because it does not contain adequate medical rationale explaining how appellant could have sustained a right shoulder injury as a consequence of his accepted May 19, 2009 employment injury. Dr. Wardell did not describe appellant's May 19, 2009 back injuries (lumbar sprain and bilateral sacrospinatus ligament

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

¹⁶ *Id.*

¹⁷ *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

¹⁸ *Id.*

¹⁹ *A.M.*, Docket No. 18-0685 (issued October 26, 2018); *Mary Poller*, 55 ECAB 483, 487 (2004).

sprains) in any detail or explain the pathophysiological process through which they could have caused appellant to fall on December 15, 2017, as alleged. He did not provide sufficient bridging evidence and medical rationale to explain how soft tissue injuries from 2009 could have caused such a fall more than eight years later. Such bridging evidence and medical rationale is especially necessary in the present case as appellant already had significant nonwork-related degenerative lumbar disc disease at the time of his May 19, 2009 employment injury. In addition, Dr. Wardell did not explain how a December 15, 2017 fall could have caused a specific right shoulder condition. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition has an employment-related cause.²⁰ Therefore, Dr. Wardell's December 19, 2017 report would not establish appellant's consequential injury claim.

In reports dated February 21, March 21, April 12, May 11, June 12, July 10, August 10, and September 11, 2018, Dr. Wardell diagnosed sprain of the right shoulder consequential to low back injury with an onset date of December 15, 2017. In a September 13, 2018 report, he indicated that appellant reported that he injured his right shoulder when his low back gave out and noted, "Since his low back injury is due to a work injury, it is my opinion to a reasonable degree of medical certainty that [appellant's] right shoulder symptoms and treatment for his right shoulder is [sic] a consequence of his work-related low back injury." In a March 9, 2019 report, Dr. Wardell noted that appellant had an employment-related low back injury and that he reported experiencing giving-way episodes of his low back "as a result of the work injury." He indicated that, as described in his December 19, 2017 report, appellant reported falling on December 15, 2017 when his legs gave way due to his back pain, falling on his outstretched right hand, and "incurring a right shoulder sprain consequential to his low back injury."²¹ However, these reports also are of limited probative value on the underlying issue of this case because they do not contain adequate medical rationale in support of their opinions that appellant sustained a right shoulder injury on December 15, 2017 as a consequence of the accepted May 19, 2009 employment injury.²²

Appellant submitted reports dated February 28, March 28, June 22, September 14, and November 14, 2018, and March 13 and 28, 2019 in which Dr. Wardell diagnosed acute internal derangement of the left knee. In reports dated November 19, 2018, and January 4, 10, and 21, and February 8, 2019, Dr. Wardell diagnosed sprain of the right shoulder joint, tear of the right glenoid labrum, lesion of the superior glenoid labrum, arthritis of the right acromioclavicular joint, strain of the right rotator cuff capsule, and strain of the muscles and tendons of the rotator cuff of the right shoulder. He noted that all these conditions had an onset date of December 15, 2017. In reports dated November 20 and December 13, 2018, January 11, February 13 and 27, and April 11, 2019, Dr. Wardell collectively diagnosed sprain of ligaments of the cervical spine, left shoulder sprain, left knee contusion, and sprain of ligaments of the lumbar spine. The Board finds that these reports are of no probative value regarding appellant's consequential injury claim because they do

²⁰ See *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

²¹ Dr. Wardell noted that right shoulder arthroscopy in January 2019 revealed a partial tear of the rotator cuff, subdeltoid bursitis, and a labral tear, which he maintained were, to a reasonable degree of medical certainty, due to his May 19, 2009 employment injury.

²² *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

not provide an opinion that appellant sustained an injury as a consequence of an accepted employment injury. Some of the reports mention an onset date of December 15, 2017, but they do not provide a discussion of a consequential injury. The Board has held that a medical report is of no probative value on a given medical matter if it does not contain an opinion on that matter.²³ Therefore, these reports are insufficient to establish appellant's consequential injury claim.

In Form CA-20 reports dated February 19, August 6 and 27, October 18, and December 6 and 13, 2018, and February 27, 2019, Dr. Wardell listed a date of injury of May 19, 2009 and diagnosed left knee contusion, bilateral sacroiliac joint sprains/strains, left shoulder sprain/strain, cervical spine sprain, and dorsolumbar spine sprain. In Form CA-17 reports dated February 19, August 6 and 27, October 18, December 13, 2018, and February 13 and 27, 2019, he listed a date of injury of May 19, 2009 and collectively listed clinical findings of cervical, lumbar, and left shoulder sprains, and/or diagnosed left shoulder sprain. In all of these reports, Dr. Wardell indicated that appellant had various periods of disability commencing September 30, 2010. These reports also are of no probative value regarding appellant's consequential injury claim because they do not provide an opinion that appellant sustained an injury as a consequence of an accepted employment injury.²⁴ In fact, despite the fact that appellant has claimed a consequential right shoulder injury, these reports do not contain a diagnosis of a right shoulder condition. Thus, these reports also are insufficient to establish appellant's consequential injury claim.

In a January 23, 2018 report, Dr. Bowman diagnosed sprain of the right shoulder consequential to low back injury with an onset date of December 15, 2017. On October 19, 2018 Dr. Weller also diagnosed sprain of the right shoulder consequential to low back injury with an onset date of December 15, 2017. However, these reports are of limited probative value regarding appellant's consequential injury claim because Dr. Bowman and Dr. Weller did not provide adequate medical rationale in support of their opinions that appellant sustained a right shoulder injury on December 15, 2017 as a consequence of an employment-related low back injury. As previously noted, the Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition has an employment-related cause.²⁵ Therefore, these reports are insufficient to establish appellant's consequential injury claim.

For these reasons, the Board finds that appellant has not established that the acceptance of his claim should be expanded to include a December 15, 2017 right shoulder injury sustained as a consequence of his accepted May 19, 2009 employment injury.

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.

²³ *T.H.*, Docket No. 18-0704 (issued September 6, 2018); *see also Charles H. Tomaszewski*, 39 ECAB 461 (1988).

²⁴ *See id.*

²⁵ *See supra* note 20.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include a December 15, 2017 right shoulder injury sustained as a consequence of his accepted May 19, 2009 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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