

Aggravations, Recurrences, Consequential & Intervening Injuries. Oh, My!

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What Are We Looking At?

→ Aggravations

- Many employees already suffer from long-term or chronic conditions
 - An aging workforce naturally has diabetes, degenerative disc disease, heart problems, and many other non work conditions
 - In some cases, work may aggravate these
 - Aggravations may be brief or long-lasting

What Are We Looking At?

→ Recurrences

- Your employee has returned to work and is no longer receiving compensation. They subsequently begin complaining of problems they believe stem from the original injury and again stop work.
 - What happened? What now?

What Are We Looking At?

→ Consequential/Intervening Injuries

- The employee claims he now has a new condition that is disabling him, and it might be related to the original injury.
 - What happened? What now?

What Does All of This Mean?

- The reappearance of symptoms may indicate that a condition has not resolved. But it may also be the result of a new injury or an unrelated disease process.
- So, how do we know when work-related medical care and/or compensation are appropriate?

What Does All of This Mean?

- Some new conditions may be a natural consequence of earlier injuries or conditions.
- However, other new conditions may be the result of new, but unreported injuries, that are not related to the original injury claim.

How Do We Handle This?

- For OWCP, the question of whether a condition will be accepted and treated under the FECA boils down to two words:

“causal relationship”

Causal Relationship (CR) & Pre-Existing Conditions

Principle:

- OWCP does not “apportion” causation. If any portion of the current condition is related to work activities or exposure, the condition is compensable.

CR & Pre-Existing Conditions (cont'd)

To be persuasive, medical evidence that supports causation must be:

- Reliable—it should be consistent with both the factual and medical history of the claim
- Substantial—it should contain objective findings supportive of the diagnosis, with solid rationale
- Probative—it should address causation directly, affirmatively

CR & Pre-Existing Conditions (cont'd)

- In sum, it should provide clear medical opinion that is well reasoned and supported by objective clinical evidence (often referred to as “sound medical rationale”).
- An opinion that is based on speculation, surmise or conjecture is inherently less probative.

The “Gold Standard:” Rationalized Medical Opinion Evidence for Causal Relationship

- Medical evidence, which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors.

Elements of a Rationalized Opinion

- **HISTORY:** The opinion of the physician must be based on a complete background of the claimant's injury or exposure and his/her medical history, including relevant pre existing conditions.
- **DIAGNOSIS:** Needs a valid diagnosis-not merely symptoms (e.g., "back strain," not "back pain").

Elements of a Rationalized Opinion

- **CERTAINTY:** must be one of reasonable medical certainty, (“may/might have been caused by” are not sufficient) and
- **RATIONALE:** 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

Medical History

- Must be complete and accurate
- Needs to include an evaluation of both work and non work related factors, especially if there are inconsistencies or gaps in treatment
- Needs to include an assessment of any previous treatment or evaluation for the same condition

Diagnosis

- Needs to include a valid diagnosis-not merely symptoms
- “Pain” or “Spasms” are not diagnoses; these are symptoms
- “Rule out” is not a firm diagnosis (not yet, at least)

Certainty

- Medical certainty
 - Opinion must be clear, cannot state “possible meniscus tear”
 - Must be medically probable
 - Standard for this is generally “more likely than not”
 - Anything less than one of these is considered equivocal

Medical Rationale

- Not based on a presumption made because other possible causes cannot be identified
- Not because the patient believes it is so
- Not because “in my experience”
- Needs a sound medical reason based on evidence that is specific to this claim

Types of Causation

FECA generally recognizes four types of causation:

- Direct causation
- Precipitation
- Acceleration
- Aggravation
 - Temporary
 - Permanent

Types of Causation

- Direct causation:
 - Usually easier to understand—The injury or condition arises directly out of the incident or exposure.
 - Examples : An employee falls off a ladder and breaks an ankle; or a clerk types for several hours a day and develops carpal tunnel syndrome.

Types of Causation

- Precipitation:
 - Exists when the clinical manifestations of a dormant condition are prompted by work related factors.
 - Example: Someone with a familial tendency for latex sensitivity who becomes symptomatic after handling/wearing latex material in performance of their job.

Types of Causation

- Acceleration:
 - Exists when an employment injury or work factor hastens the clinical manifestations of a latent condition more rapidly than can be explained by the natural history of the disease process.

Types of Causation

■ *Aggravation:*

- This is probably next most common, after direct causation. But what does it mean, really?

Types of Causation

- **Aggravation:**
- Described as a worsening of an already existing or established medical condition.
- Example: Symptoms of an employee's underlying degenerative disc disease are made more manifest when lifting heavy items during the course of employment.

Aggravation

- There are two “types ” of aggravation
- Temporary aggravation and
- Permanent aggravation

Aggravation

- **Temporary aggravation**—results in no **permanent** damage.
- The pre-existing *condition* is worsened or made more severe by incidents or factors of the Federal employment for a limited time, resulting in temporary disability with *no residual alteration* of the underlying condition.

Aggravation

- A claimant is entitled to compensation benefits for the period of disability, but not after the aggravation has ceased, even if the claimant is found medically disqualified for the job held at the time of the injury, because of the effects the employment might have on the underlying condition.
(ref: *James L. Hearn*, 29 ECAB 278)

Aggravation

- **Permanent aggravation**—a continuing and *irreversible change in the underlying condition*, thus adversely altering the course of the condition or disease process. A *material change* must occur to alter the course of the underlying disease.

Aggravation

- *Aggravation of the **symptoms** of a condition are not considered an aggravation of the underlying condition* and the fact that work activities produce pain/discomfort revelatory of an underlying condition is not considered to infer an etiological relationship (i.e., doesn't mean work *caused* it) (*Wilbur D. Starks, 23 ECAB 85—peripheral vascular disease*)

Recurrences, Consequential & Intervening Injuries

- Recurrences, consequential and intervening injuries are injuries that happen elsewhere than in the workplace. What they have in common is that there is no “performance of duty” element in their occurrence. However, it is the connection to performance of duty that is the distinguishing feature between them.

Recurrences, Consequential & Intervening Injuries

- Recurrences—A spontaneous return of symptoms or a previous injury or occupational disease without intervening cause
- ***Consequential Injury***—considered related to performance of duty because of its nexus to a work-related injury (performance of duty met by extension)
- ***Intervening Injury***—considered to “break the chain of causation” connecting the work injury to the current condition (performance of duty no longer met)

Consequential Injuries

- A ***consequential injury*** is one which happens off the job, but arises as a natural consequence of an industrial condition.
 - Example: An employee with a recent knee surgery is walking up the steps to his house when his knee buckles and he falls, hitting his head and sustaining a concussion.

Consequential Injuries

- Medical hx: Claimant had a prior work-related knee injury with arthroscopic meniscectomy and reattachment of the torn ACL (anterior cruciate ligament)
- Injury hx: Claimant falls and hits his head. He says his knee buckled, causing him to fall
- Reasonable? Why?

Consequential Injuries

- If the buckling of the knee is considered *medically* to have been a natural outcome of the knee injury and surgery, the additional condition (concussion) is accepted as “consequential” to the accepted knee condition.
 - Of course if it was the unaffected knee that buckled, additional convincing medical rationale would be needed.

Consequential Injuries

- Real situations can get far murkier than the example, but still be “reasonable” and accepted.
 - Example: A claimant with a head injury who was taking an anti-seizure medication, one side effect of which was dry mouth. Because of the dry mouth, he had major dental problems, all of which were accepted.

Consequential Injuries

- In that case, the medical evidence noted that dry mouth was the direct cause of the dental problems, and that dry mouth was a documented and well-known side effect of that particular anti-seizure medication

Consequential Injuries

Claims implication:

- If the medical evidence persuasively shows that the new injury or condition arose as a “natural consequence” of the accepted industrial injury *or its treatment*, then the new injury or condition is acceptable as part and parcel of the claim. Typically, no new claim document is required.

Intervening Injuries

- An *intervening injury* is an injury, also occurring off the job, to the same part of the body as an accepted injury and of sufficient severity to “break the chain of causation” between the current condition and the original industrial injury

Intervening Injuries

- There is nothing “cut and dry” about this standard. It is one of many that is very subjective. The issue is phrased as “chain of causation.” What this means is that, absent the intervening injury, would the condition be what it is now? Or is the severity of the intervening injury sufficient, in and of itself, to explain the current condition?

Intervening Injuries

Claims implications:

- If the weight of the medical evidence demonstrates that the intervening injury is responsible for the current degree of disability, which would be the same even without the industrial injury, then the intervening injury has “broken the chain of causation,” and compensation for disability is no longer payable.

Intervening Injuries

- In practice, this is a pretty hard standard to meet. It *can* happen, but the medical evidence needs to be good, well-rationalized, and based on a complete and accurate history.

Recurrences

- The condition remains compensable so long as the worsening is not shown to have been produced by an independent non industrial cause or exposure to new work factors.
- and so long as is it clear that the real operative factor is the progression of the compensable injury.

Recurrences

An employee may have suffered a recurrence of the original injury if he/she:

- RTW regular duty and again becomes disabled
- RTW light duty and becomes totally disabled
- RTW light duty and the employing agency later withdraws or alters the position so that the employee can no longer perform the job.

Recurrences Within 90 days of RTW after Full or Limited Duty

- The claimant must provide medical evidence that the disability is causally related
- The medical information should describe the duties which the employee cannot perform, and the demonstrated objective medical findings that form the basis for renewed disability for work

Recurrences After 90 days of RTW Light Duty

- A claimant performing light duty is not considered fully recovered. Burden of proof needs to support increase of disability rather than another cause
- The evidence needs to show one or more of the following:
 - Can no longer perform the light duty position
 - Medical evidence supports worsening of condition
 - The light duty job has changed
 - Withdrawal of light duty assignment.

Recurrence Claimant Full Duty Beyond 90 days

- The totality of the evidence must clearly indicate that the recurrent disability is causally related to a material change in the accepted condition(s) without intervening cause.
- Factual evidence: The claimant should be asked to provide a description of changes in his or her accepted condition(s), and any changes in duties during the intervening period
- Medical evidence: changes in findings, how such changes are causally related to the claimed recurrent disability without intervening cause

Medical Recurrence within 90 Days of Release of Care

- The medical statement need not contain significant medical rationale, unless:
 - There is clear evidence of an intervening injury
 - If originally accepted for temporary aggravation of a pre-existing condition, a reasoned opinion supporting causal relationship to the work injury is required
 - The claim involves a different diagnosis from the accepted condition in the claim
 - A formal denial decision has been issued

Medical Recurrence After 90 Days of Release of Care

- Computed from the date of the last medical report in the case record.
- The medical rationale should be as detailed and conclusive as the evidence required to establish the original claim.

For further information. . .

FECA *Procedure Manual*, chapter 2-805 (Causal Relationship)

§ 6—Consequential and Intervening Injuries

§ 7—Psychogenic Overlay

Happens more often than we'd like. Issue is whether the pain disorder arose out of the injury or as a means of coping with other aspects of life

Arthur Larson & Lex Larson, *The Law of Workers' Compensation*, multi-volume compendium of State workers' compensation decisions (plus some ECAB decisions). Used by the ECAB, as well, for general concepts. Good discussions of some of the more complex topics, including consequential and intervening injuries and "chain of causation."

Questions?

