

**United States Department of Labor
Employees' Compensation Appeals Board**

W.W., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Charleston, SC, Employer)

**Docket No. 10-1922
Issued: July 11, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 19, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) decision dated March 10, 2010, which affirmed the denial of her claim for a recurrence of disability. Pursuant to the Federal Employees' Compensation Act¹ 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 her burden of proof to establish a recurrence of disability from June 30 to July 2, 2009 causally related to her July 12, 2007 employment injury.

FACTUAL HISTORY

On July 12, 2007 appellant, then a 43-year-old, transportation security screener, injured her right thigh and hip when she was looking under seats during a security sweep. OWCP

¹ 5 U.S.C. § 8101 *et seq.*

accepted her claim for right hip and right thigh sprains and enthesopathy of the hip region. Appellant returned to a full-time permanent limited-duty position on July 13, 2007.² She received appropriate compensation benefits.

In an October 8, 2007 report, Dr. Charles Hughes, a radiologist, noted that appellant was seen for a follow-up evaluation following a magnetic resonance imaging (MRI) scan of the right hip, which revealed acetabular labral changes with a probable acetabular labral tear and mild iliopsoas tendon insertion strain. A June 11, 2008 report from Dr. Bright McConnell, a Board-certified orthopedic surgeon and treating physician, revealed that appellant stepped from her porch at home over the weekend and experienced an increase in her groin pain. In a September 29, 2008 report, Dr. James K. Aymond, a Board-certified orthopedic surgeon, recommended modified duty and noted that appellant had a preexisting condition that was aggravated by the work-related injury in July 2007. In a December 23, 2008 report, he noted that she was treated for L5-S1 neural foraminal stenosis that was aggravated by her twisting injury on July 12, 2007. Dr. Aymond indicated that appellant continued to have right-sided high and thigh pain and radiculopathy at L5.

OWCP referred appellant for a second opinion examination with Dr. Douglas Hein, a Board-certified orthopedic surgeon. In an April 6, 2009 report, Dr. Hein noted her history of injury and treatment and opined that the work incident caused a hip strain and iliopsoas strain which had resolved. He indicated that appellant had a small labral tear with intermittent hip pain which was related to the July 12, 2007 injury. Dr. Hein opined that she would experience intermittent groin pain and recurrent labral pain in the groin. He further determined that the nonwork-related slip in the grocery store in December 2007 caused an increase in the aggravation of appellant's lumbar condition. Dr. Hein indicated that she could perform limited duties which included no lifting over 40 pounds.

In a June 5, 2009 treatment note, Dr. McConnell diagnosed bursitis and tendinitis in the hip region and lumbar stenosis. He indicated that appellant was at maximum medical improvement and had permanent restrictions. Dr. McConnell also noted that she had some residuals of lumbosacral disc disease with intermittent S1 neuropathy. He opined that these conditions were aggravated by appellant's work injury of July 12, 2007. In a June 30, 2009 treatment note, Dr. McConnell diagnosed right hip and thigh pain. He placed appellant off work and indicated that she could return to modified duty on July 2, 2009. Dr. McConnell saw her on July 2, 2009 and recommended limited duty effective July 2, 2009 with restrictions including no lifting over 40 pounds, ground level work only, no ladder, no heights, no continuous standing, sitting and minimum walking or climbing. He continued to treat appellant and recommend light duty.

On July 9, 2009 appellant filed a notice of recurrence of disability alleging that she sustained a recurrence of her July 12, 2007 injury. She noted that, after the injury, she was restricted from bending, squatting, stooping and lifting of more than 10 to 30 pounds. Appellant

² On August 1, 2007 appellant was released from care; however, on August 10, 2007, she returned to restricted duty. The record reflects that appellant slipped in a grocery store on December 12, 2007 and reaggravated her right hip and thigh. OWCP did not accept any conditions resulting from the fall in the grocery store. On June 18, 2009 OWCP denied appellant's claim for a low back condition.

indicated that she had major groin/hip pain, stabbing pain into her groin while walking and pain on the outside of her hip at night. The employing establishment explained that she was on limited duty since the initial injury and continued to be accommodated. It also indicated that appellant stopped work on June 30, 2009 and returned on July 3, 2009.

In a letter dated July 21, 2009, OWCP advised appellant of the additional factual and medical information needed to establish her claim.

In a July 27, 2009 statement, appellant indicated that her manager advised her that she should file a claim whenever her injury was “reaggravated.” In an August 7, 2009 physical therapy note, she advised that she drove to New York and it was “very painful.”

In a decision dated August 25, 2009, OWCP denied appellant’s claim for a recurrence of disability. It found that the evidence did not establish that she was unable to perform restricted-duty work due to a material worsening of the accepted work injury. OWCP noted that the medical evidence did not establish that the claimed recurrence resulted from the accepted injury.

On September 8, 2009 appellant requested a telephonic hearing, which was held on December 11, 2009. During the hearing, she indicated that she experienced difficulty with walking due to her groin pain, which she attributed to her 2007 injury. Appellant continued to assert that her symptoms were work related.³

In a September 2, 2009 report, Dr. McConnell diagnosed bursitis, tendinitis and lumbar stenosis. He advised that appellant may have aggravated her underlying iliopsoas strain. Additionally, Dr. McConnell noted that there was a question about the involvement of the L5-S1 disc which was not currently accepted. However, he noted that appellant could return to work and continued his restrictions.

In reports dated October 26, 2009, January 7 and 25, 2010, Dr. J. Edward Nolan, a Board-certified anesthesiologist and pain management specialist, reported that appellant was treated for chronic hip, groin and leg pain, associated with her July 2007 work injury. Regarding appellant’s lumbar spine, he noted that, the claim was denied; however, he believed that she aggravated her spine during the work injury of July 2007. Dr. Nolan addressed her incident at the grocery store on December 12, 2007. He noted that appellant slipped but did not fall to the ground and reported no difference in the location of her pain after the event. Dr. Nolan opined that it was “only a reaggravation of the existing injury from July 2007.”

In a March 10, 2010 decision, OWCP’s hearing representative affirmed the August 25, 2009 decision.

³ On October 23, 2009 OWCP reduced appellant’s wage-loss compensation to zero, effective July 13, 2007, finding that her actual earnings as a transportation security screener fairly and reasonably represented her wage-earning capacity.

LEGAL PRECEDENT

Section 10.5(x) of OWCP's regulations provide that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁴

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantive evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements.⁵

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.⁶ This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁷ The physician's 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 specific employment factors identified by the claimant.⁸

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁹

ANALYSIS

Appellant's claim was accepted for right hip and right thigh sprains and enthesopathy of the hip region. She subsequently alleged a recurrence of disability on June 30, 2009. Appellant

⁴ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

⁵ *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁶ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

⁷ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

⁸ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

⁹ *Walter D. Morehead*, 31 ECAB 188 (1986).

returned to work on July 3, 2009. On July 21, 2009 OWCP advised her of the type of medical and factual evidence needed to establish her claim for a recurrence of disability.¹⁰

Appellant has not alleged a change in the nature and extent of her light-duty job requirements. She must thus provide medical evidence establishing that she was disabled due to a worsening of her accepted work-related conditions.¹¹ This is especially important in appellant's case, as there are several nonwork incidents subsequent to her injury to which her disability and symptoms could be attributed. They include the slip in the grocery store on December 12, 2007, stepping off her porch on June 11, 2008 and driving from South Carolina to New York in August 2009.

In a June 30, 2009 treatment note, Dr. McConnell diagnosed right hip and thigh pain. He placed appellant off work and indicated that she could return to modified duty on July 2, 2009. A physician's mere diagnosis of pain, without more by way of an explanation, does not constitute a basis for payment of compensation.¹² The Board notes that Dr. McConnell did not offer any opinion to explain why appellant was unable to perform her modified employment for eight hours per day for the period June 30 to July 2, 2009 or explain why this was related to the July 12, 2007 employment injury. Dr. McConnell continued to place her on modified duty in his subsequent reports and he did not offer any opinion that she was disabled due to her July 12, 2007 employment injury. Thus, they are of limited probative value.

In reports dated October 26, 2009, January 7 and 25, 2010, Dr. Nolan, advised that he believed that appellant aggravated her spine during the work injury of July 2007. He also dismissed the grocery store incident on December 12, 2007 noting that she slipped but did not fall to the ground and reported no difference in the location of her pain after the event. However, Dr. Nolan did not appear to be aware of the incident when appellant stepped off her porch in June 2008 nor did he offer an opinion that she was disabled on or after June 30, 2009 due to her July 12, 2007 employment injury. Likewise, he did not offer any opinion explaining why she was unable to perform her modified employment for eight hours per day for the period June 30 to July 2, 2009 and how this was related to the July 12, 2007 employment injury.

Other reports submitted by appellant did not address her recurrence claim on or after June 30, 2009. Appellant has not met her burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit her from performing the light-duty position she assumed after she returned to work.

¹⁰ Although OWCP reduced appellant's compensation to zero pursuant to an October 23, 2009 wage-earning capacity decision, she filed her claim for a recurrence of disability prior to issuance of the October 23, 2009 decision. Furthermore, OWCP is not precluded from adjudicating a limited period of employment-related disability when a formal wage-earning capacity determination has been issued. *Sandra D. Pruitt*, 57 ECAB 126 (2005). See *Katherine T. Kreger*, 55 ECAB 633 (2004).

¹¹ *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹² *Robert Broome*, 55 ECAB 493 (2004).

On appeal, appellant made arguments regarding the employing establishment's procedures related to obtaining physician's notes. She also alleged that the grounds for her request were that she had a chronic acute condition. However, the issue is medical in nature. As noted above, appellant did not meet her burden of proof to submit medical evidence establishing that she was unable to perform her light-duty condition from June 30 to July 2, 2009 due to a spontaneous change in her accepted condition.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability beginning June 30, 2009 causally related to her July 12, 2007 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 10, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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