United States Department of Labor
Employees' Compensation Appeals Board

B.D., Appellant	)	
and	)	**Docket No. 13-457**
	)	**Issued: May 2, 2013**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION BLACK HILLS HEALTH CARE SYSTEM, Fort Meade, SD, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 28, 2012 appellant filed a timely appeal of an October 29, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish a recurrence of her medical condition.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 29, 2011 appellant, then a 55-year-old nurse, sustained lower back soreness while in the performance of duty. She was released to full-time work on April 1, 2011. OWCP accepted appellant's traumatic injury claim for lumbar sprain.[2]

On September 7, 2012 appellant filed a recurrence claim, alleging that her condition worsened on May 1, 2011 and necessitated further medical treatment. She did not stop work. A September 5, 2012 note from Dr. Bart L. Eastwood, an osteopath specializing in family medicine, indicated that appellant was scheduled for surgery on September 25, 2012.

OWCP informed appellant in a September 17, 2012 letter that additional evidence was needed to establish her claim for recurrence of medical condition. It gave her 30 days to submit a medical report from a physician explaining the connection between her present condition and the accepted injury.

Appellant submitted a number of medical reports. In various notes for the period July 22 to October 10, 2011, Dr. Jerrid W. Goebel, a chiropractor, examined her and found diminished thoracolumbar, lumbar, sacroiliac, and pelvic range of motion (ROM), hypertonic and tender lumbar paraspinal, quadratus lumborum, psoas, hip flexor, piriformis, and gluteus muscles, and positive straight leg raise and Thomas tests. He opined that extended hours at work appeared to aggravate appellant's symptoms.

In an August 30, 2011 report, Dr. Charles A. Lewis, an osteopath specializing in family medicine, related that appellant experienced right lateral hip pain and administered a greater trochanter cortisone injection. He added that she "worked a 15-hour shift ... the other day and hurt severely after that." On December 6, 2011 Dr. Lewis obtained a magnetic resonance imaging (MRI) scan of the right hip exhibiting degenerative changes of the superior acetabulum and calcific spurring of the greater trochanter and administered another cortisone injection. He diagnosed degenerative right hip joint disease and greater trochanteric bursitis in a January 16, 2012 report.

Dr. Eastwood diagnosed lumbago, right trochanteric bursitis, iliotibial band tendinitis, and thigh and pelvic joint pain in reports from January 23 to May 2, 2012. He mentioned that appellant's symptoms worsened after a 12-hour shift at work. Dr. Eastwood administered a right intra-articular hip injection on April 10, 2012.

A May 10, 2012 MRI scan arthrogram obtained by Dr. David K. White, a Board-certified diagnostic radiologist, confirmed fluid in the greater trochanteric bursa, but did not show acetabular labral tears or internal derangement. In July 9 and August 20, 2012 reports, Dr. Eastwood reviewed the MRI scan arthrogram and diagnosed degenerative right hip osteoarthritis.

[2] OWCP noted that appellant's claim was originally received as a simple, uncontroverted case resulting in minimal or no lost time from work and payment was approved for limited medical expenses without formal adjudication.

In a September 6, 2012 report, Dr. Lewis commented that an MRI scan demonstrated that appellant sustained complete abductor tendon tear. On examination, he observed parathoracic and lumbar tenderness. Dr. Lewis diagnosed ruptured right hip abductor tendon and pointed out that appellant was scheduled for surgery.[3]

On September 25, 2012 appellant underwent gluteus medius abductor repair and trochanteric bursectomy.

By decision dated October 29, 2012, OWCP denied appellant's claim for recurrence of medical condition, finding the evidence insufficient to establish that her alleged need for further medical treatment was due to a worsening of her accepted lumbar sprain.

LEGAL PRECEDENT

A recurrence of medical condition refers to a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original treatment or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment.[4]

An employee who claims a recurrence of medical condition has the burden of proof to establish causal relationship by the weight of substantial, reliable and probative evidence. This burden requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the employee's need for additional medical care is causally related to the accepted injury and supports that conclusion with sound medical reasoning.[5]

ANALYSIS

OWCP accepted that appellant sustained lumbar sprain while in the performance of duty on January 29, 2011. She was released to full-time work effective April 1, 2011. Appellant subsequently filed a September 7, 2012 claim for recurrence of medical condition and submitted medical evidence.

Medical evidence of bridging symptoms must demonstrate that the claimed recurrence was causally related to the accepted injury.[6] In an August 30, 2011 report, Dr. Lewis related that appellant worked a 15-hour shift "the other day" and experienced right lateral hip pain. He obtained a right hip MRI scan on December 6, 2011, which confirmed degenerative changes of the superior acetabulum and calcific spurring of the greater trochanter, and diagnosed

[3] Appellant also submitted records from a physical therapist for the period February 15 to April 5, 2012 and a physician assistant's postoperative report dated October 5, 2012.

[4] 20 C.F.R. § 10.5(y).

[5] *E.O.*, Docket No. 11-1099 (issued February 24, 2012); *J.B.*, Docket No. 11-1410 (issued January 5, 2012).

[6] *Ricky S. Storms*, 52 ECAB 349 (2001).

degenerative right hip joint disease and greater trochanteric bursitis. In a September 6, 2012 report, Dr. Lewis stated that another MRI scan exhibited complete abductor tendon tear and diagnosed ruptured right hip abductor tendon.[7] However, he did not explain with sound medical reasoning how appellant's present condition was causally related to her accepted lumbar sprain.[8] Dr. Lewis merely noted that she was symptomatic following a 15-hour shift on an undisclosed date. The fact that appellant was asymptomatic before a work shift and symptomatic afterward, by itself, cannot establish causal relationship.[9]

Dr. Eastwood diagnosed lumbago, right trochanteric bursitis, iliotibial band tendinitis, and thigh and pelvic joint pain in reports from January 23 to May 2, 2012. He also mentioned that appellant's symptoms worsened after a 12-hour shift at work. Following review of a May 10, 2012 MRI scan arthrogram, Dr. Eastwood diagnosed degenerative right hip osteoarthritis. To the extent that he asserted that appellant's present condition was causally related to her accepted lumbar sprain, he did not fortify his conclusion with medical rationale.[10]

In chiropractic notes for the period July 22 to October 10, 2011, Dr. Goebel opined that extended work hours appeared to aggravate appellant's symptoms. As defined under FECA, a "physician" includes a chiropractor only to the extent that his reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[11] If the accepted condition does not pertain to a diagnosis of subluxation, a chiropractor is not a physician under FECA and his opinion does not constitute competent medical evidence.[12] In this case, OWCP only accepted lumbar sprain. Therefore, Dr. Goebel's notes did not constitute competent medical evidence. Likewise, because neither physical therapists[13] nor physician assistants[14] are considered physicians as defined under section 8101(2) of FECA, a physical therapist's records for the period February 15 to April 5, 2012 and a physician assistant's postoperative report dated October 5, 2012 lacked probative value. In the absence of rationalized medical opinion evidence, appellant did not meet her burden of proof.

Appellant contends on appeal that the recurrence of her medical condition was due to the January 29, 2011 employment injury. As noted, the medical evidence did not sufficiently establish this connection.

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[7] The Board notes: (1) the case record does not contain evidence of these MRI scan findings; and (2) Dr. Lewis, *inter alias*, diagnosed multiple conditions that have yet to be accepted by OWCP as employment related. *See A.K.*, Docket No. 12-742 (issued October 18, 2012).

[8] *See id.*

[9] *T.M.*, Docket No. 08-975 (issued February 6, 2009).

[10] *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

[11] 5 U.S.C. § 8101(2); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[12] *D.C.*, Docket No. 11-1865 (issued April 4, 2012).

[13] *Jennifer L. Sharp*, 48 ECAB 209 (1996).

[14] *Allen C. Hundley*, 53 ECAB 551, 554 (2002).

Appellant may submit new evidence or argument as part of a formal 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 did not establish that she sustained a recurrence of her medical condition.

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2012 merit decision of the Office of Workers' Compensation Programs be affirmed.

Issued: May 2, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board