

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAURA T. NICOLA and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Clarksburg, WV

*Docket No. 03-1015; Submitted on the Record;
Issued July 17, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant established that she sustained a recurrence of disability causally related to her accepted January 27, 2001 left hip and left knee injuries; and (2) whether appellant established that she sustained a back condition as a result of her January 27, 2001 employment injury.

On February 9, 2001 appellant, then a 53-year-old police officer, filed a traumatic injury claim for injuries to her left knee, ankle and hip she sustained when she slipped and fell in the performance of duty. Appellant stopped work on February 6, 2001 and returned to light duty, out of uniform, on March 7, 2001. She was released to full duty on March 27, 2001.

The Office of Workers' Compensation Programs accepted appellant's claim for left hip and knee sprains.¹

On August 7, 2001 appellant was placed on light duty by her physician. On August 16, 2001 she filed a claim for a recurrence of disability. Appellant did not list the date of recurrence, but rather stated that the pain in her left hip never stopped completely after her January 27, 2001 injury. In addition, she did not indicate on her claim form when she stopped work. Finally, it is not clear from the record whether appellant had begun to work light duty at the time she filed her claim for a recurrence. On the reverse side of the recurrence claim form, the employing establishment stated that appellant "is again on light duty per her physician."

By letter dated August 22, 2001, the Office informed appellant of the type of evidence necessary to establish her claim.

¹ The evidence contemporaneous to appellant's injury including medical reports from her treating physician at the time, Dr. Kelly Nelson, diagnosed her condition as sprains of the left hip and knee. X-rays of appellant's left hip and knee performed on February 5, 2001 were normal.

In a response received September 13, 2001, appellant provided additional factual and medical information in support of her claim.

By decision dated October 16, 2001, the Office denied appellant's claim on the grounds that the medical evidence of record was insufficient to establish that her claimed recurrence of disability was causally related to her original January 27, 2001 injury

On November 2, 2001 appellant, through counsel, requested an oral hearing before an Office hearing representative. Appellant also submitted additional medical evidence, including an October 26, 2001 magnetic resonance imaging (MRI) scan revealing abnormalities of the lumbar spine.

At the July 31, 2002 hearing, appellant testified that following her release to full duty on March 27, 2001, while she resumed her full uniform, including wearing her heavy gun belt, she continued to receive accommodations from her employer and coworkers, who allowed her to perform primarily desk duty. She also stated that her condition continued to deteriorate and that at the time she filed her claim for a recurrence, she was having trouble walking, wearing the weight of a gun, lifting and performing the physical functions necessary to allow her to check vehicles and packages that were entering the work site. Appellant added that after a period of receiving accommodations, on a date unspecified, her captain insisted that she either perform her full duties or not report back to work. She testified that she then began using her sick and annual leave and then went on leave without pay.

In a decision dated December 9, 2002, an Office hearing representative affirmed the October 16, 2001 prior decision, finding that appellant failed to establish a claim for a recurrence of disability. The hearing representative also found that, to the extent that appellant was now claiming a new lumbar condition, the evidence of record was insufficient to meet her burden to establish that this condition was causally related to her January 27, 2001 employment injury.

The Board finds that appellant did not establish that she sustained a recurrence of disability for periods after her March 7, 2001 return to work, due to the January 27, 2001 employment injury.

An individual who claims a recurrence of disability, due to an accepted employment-related injury, has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.² This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³ An award of compensation may not be made on the

² *Kenneth R. Love*, 50 ECAB 193 (1998).

³ *Bernard Snowden*, 49 ECAB 144 (1997).

basis of surmise, conjecture or speculation or an appellant's unsupported belief of causal relation.⁴

In support of her claim for a recurrence of disability, appellant submitted medical reports from her various treating physicians. In a report dated June 18, 2001, Dr. Patrick J. Galey, her treating orthopedic surgeon, noted that appellant presented complaining of a painful left hip. She stated that as her left knee pain subsided, her left hip pain began to bother her more and had actually worsened over the past few weeks. Appellant reported that this pain, which Dr. Galey described as being over the left sacroiliac joint, was persistent and radiated part way down her leg. X-rays performed on June 18, 2001 revealed normal sacroiliac joints with no bony abnormalities. On physical examination, Dr. Galey noted tenderness over the left sacroiliac joint on palpation, some limitation of motion on extension and positive Fabere and Gaenslen wound tests. He also noted that straight leg raising at 60 to 70 degrees caused pain over the sacroiliac joint with no radiating into the leg. Dr. Galey diagnosed left sacroiliac joint sprain strain and prescribed physical therapy. He instructed appellant to follow up in one month, but did not indicate in his report whether she was unable to work and did not address whether appellant's diagnosed conditions were causally related to her original January 27, 2001 injury.

In a follow-up report dated August 8, 2001, Dr. Galey noted that appellant reported continued pain over the left sacroiliac joint, which was made worse by wearing her heavy gun belt and kept her awake at night. The physician noted that appellant specifically requested that she be placed on a light-duty desk job for a while and further asked for medication to help her sleep. On physical examination Dr. Galey noted marked tenderness directly over the left sacroiliac joint, as well as positive Fabere and Gaenslen tests, but the rest of the examination was normal. Dr. Galey diagnosed left sacroiliitis and requested authorization for a bone scan to confirm the diagnosis. He prescribed medication and placed appellant on light duty until after the bone scan was performed. Again, Dr. Galey did not discuss the causal relationship, if any, between appellant's diagnosed conditions and her originally accepted work injury.

Appellant also submitted a report dated September 26, 2001 from Dr. F. Clifford Valentin, an orthopedic surgeon, from whom she sought a second opinion. He recorded her complaints of pain, reviewed her medical records and documented her history of injury. On physical examination he noted that appellant had 1/5 positive Waddell's signs, slightly increased subjective pain behaviors and positive left sided Fortin's finger test, Faber's test, sacroiliac tenderness and sacroiliac joint loading, but no pain with internal rotation of either hip. Dr. Valentin listed his assessment as: (1) chronic left lower extremity radiating back pain; (2) work-related injury; (3) left sacroiliac pain; (4) lateral tibial bruise on MRI; (5) currently working light duty. He stated that appellant needed a bone scan of the low back area to rule out overlying left sacral insufficiency fractures and might require sacroiliac injections. The physician did not address appellant's ability to work.

On October 10, 2001 appellant began treatment with Dr. Joseph A. Snead, a Board-certified orthopedic surgeon. In his initial report, Dr. Snead noted appellant's history of injury, as well as the fact that she was currently performing administrative duties, rather than her full

⁴ See *William S. Wright*, 45 ECAB 498, 503 (1994).

security officer duties, due to her reported inability to wear a heavy gun belt. He noted appellant's complaints of back and leg pain, reviewed her medical history and performed a physical examination. Dr. Snead noted that appellant had about 40 to 50 degrees of lumbar flexion, straight leg raising sign was mildly positive for back and left gluteal pain, knee and ankle reflexes were intact and she had no calf atrophy. In addition, appellant demonstrated full range of motion of the left knee with some mild patellofemoral crepitation, but with negative Lochman, varus and valgus open signs. Her left ankle also showed no instability, no swelling and normal range of motion. In discussing his diagnosis, Dr. Snead stated that appellant had some residuals of chondromalacia of the left patella and some residuals of a sprain of the collateral lateral ligaments of the left ankle, but that her major disability was probably a herniated disc in her back. He stated that this disc was probably at a high level, possible at L3-4, because the symptoms in appellant's leg were confined to her thigh and that she needed an MRI to confirm this. Dr. Snead concluded that appellant could not do any type of work involving prolonged standing or bending or heavy lifting and also could not run, kneel, jump, bend, climb ladders or poles or employ defensive tactics.

In a report dated October 26, 2001, Dr. Snead stated that the MRI of the lumbar spine revealed no evidence of a ruptured disc, but there was some desiccation and softening of the disc between L and S1. He stated that, when he looked at the MRI himself, he could see some slight bulging of the discs but nothing dramatic and noted that appellant was not a surgical candidate. Dr. Snead noted that appellant continued to complain of low back pain radiating into the left thigh, but not traveling below the knee. Dr. Snead also noted that appellant complained of some residual pain in the medial side of the left knee and on the lateral side of the ankle, although examination was essentially negative. He stated that because appellant was not a surgical candidate, he recommended that she retire from her position as a police officer and have her family physician prescribe some anagelzia. Dr. Snead stated that he felt that once she got out of the job force and became a bit more sedentary, appellant's back may get a little better over time.

In his final report of record, dated August 20, 2002, Dr. Snead stated that appellant had injured her back, when she fell on January 27, 2001. He concluded that her back and leg pain were "due to the injury of January 27, 2001 on a historical basis."

Appellant did not present any medical evidence with rationale explaining how her alleged recurrence of disability was causally related to her January 27, 2001 employment injury. In his report dated June 18, 2001, Dr. Galey described appellant's subjective complaints of sacroiliac pain and diagnosed sacroiliac joint sprain, but did not address either the relationship of these diagnosed conditions to appellant's January 27, 2001 employment injury or her ability to work. Therefore, this report is of insufficient probative value to support appellant's claim for a recurrence of disability.⁵ In his follow-up report dated August 8, 2001, Dr. Galey placed appellant on light duty due to her left hip pain or sacroiliitis, but specifically noted that he had done so at her request. As he did not provide a rationalized medical opinion explaining the relationship between appellant's left hip pain and her January 27, 2001 employment injury or explain why, from a medical standpoint, her condition prevented her from performing her work,

⁵ *Helen K. Holt*, 50 ECAB 279 (1999).

this report is also of limited probative value.⁶ The Board has held that a medical opinion not fortified by medical rationale is of little probative value.⁷ Similarly, as Dr. Valentin did not address appellant's ability to work, his report is also of limited probative value for the purpose of establishing appellant's claim for a recurrence of disability.⁸ Finally, with respect to the reports of Dr. Snead, while the physician stated that appellant could not perform her regular duties due to her bulging disc, as shown on the MRI, as this claim has not been accepted for a bulging disc, his report is insufficient to establish a recurrence of disability, causally related to her January 27, 2001 employment injury.⁹

The Board also finds that appellant did not establish that she sustained a back condition causally related to her January 27, 2001 employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.¹⁰ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.¹¹

The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes 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. The opinion of the physician 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.¹²

In this case, all the medical evidence contemporaneous to appellant's January 27, 2001 employment injury referred only to left hip, knee and ankle pain. While subsequent reports focused on appellant's continuing left hip pain, specifically in the sacroiliac region, there were no diagnoses of a back injury. Dr. Snead first speculated about a possible back injury on October 10, 2001 and referred appellant for a lumbar MRI. After reviewing the MRI results,

⁶ *Id.*

⁷ *Annie L. Billingsley*, 50 ECAB 210, 213 n. 20 (1998).

⁸ *See Bernard Snowden*, *supra* note 3.

⁹ *Id.*

¹⁰ *Rebecca LeMaster*, 50 ECAB 254 (1999); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

¹¹ *Id.*

¹² *Kenneth R. Love*, *supra* note 2.

however, Dr. Snead still does not give a definite diagnosis of appellant's condition, but rather states only that she has some slight disc bulging, but "nothing dramatic." With respect to the cause of this condition, Dr. Snead states only that appellant's back and leg pain are causally related to her January 27, 2001 employment injury "on a historical basis," but does not provide any medical rationale as to how her diagnosed back conditions resulted from the January 27, 2001 employment injury.¹³ Similarly, he does not explain his recommendation that appellant retire from the police force, in light of his finding that she is not a surgical candidate and that her back condition is nothing dramatic. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.¹⁴ Therefore, Dr. Snead's opinion is of insufficient probative value to establish that appellant sustained a back condition related to her employment.

Therefore, as appellant did not submit any rationalized medical evidence to support her claim that she developed a separate back condition as a result of her January 27, 2001 employment incident, she failed to meet her burden of proof and the Office properly denied her claim.

The December 9, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 17, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹³ *Helen K. Holt*, *supra* note 5.

¹⁴ *Charles E. Evans*, 48 ECAB 692 (1997).