United States Department of Labor
Employees' Compensation Appeals Board

ELLEN M. WESTBROOK, Appellant	)	
and	)	**Docket No. 05-266**
	)	**Issued: December 6, 2005**
DEPARTMENT OF VETERANS AFFAIRS, REGIONAL OFFICE, Lakewood, CO, Employer	)	

Appearances:
John S. Evangelisti, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 2, 2004 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated November 12, 2003 and October 14, 2004 which denied her right hip and left foot conditions as causally related to her federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[1]

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a right hip and left foot condition causally related to her March 5, 1999 employment injury. On appeal, counsel contends that the medical evidence of record establishes that these conditions are causally related to her March 5, 1999 employment injury.

[1] Oral argument was initially scheduled to be held on January 18, 2006. This was cancelled at appellant's request.

FACTUAL HISTORY

On March 5, 1999 appellant, then a 50-year-old personnel management specialist, filed Form CA-1, claim for compensation, alleging that she injured her left elbow and hip when she slipped and fell on ice that day. She returned to work on March 8, 1999 and on August 23, 1999, the Office accepted that appellant sustained an employment-related open wound of her lower arm and a neck sprain.[2]

Appellant came under the care of Dr. Clarence V. Ellis, a Board-certified family physician, and Dr. John T. Sacha, a Board-certified physiatrist. Dr. Ellis referred her to Dr. James S. Ogsbury, III, a Board-certified neurosurgeon, who provided an April 10, 2001 report which diagnosed a significant herniated disc at C5-6 and recommended surgery.[3]

On August 23, 2001 the Office referred appellant, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Bryan J. Duke, a Board-certified neurosurgeon, for a second opinion evaluation. By report dated September 17, 2001, he noted the history of injury and appellant's complaints of headache, neck and shoulder pain and numbness in the hands and feet bilaterally. Appellant reported that she had been diagnosed with plantar fasciitis subsequent to the employment injury. He noted magnetic resonance imaging (MRI) scan findings of a very large disc protrusion at C5-6 with severe spinal cord compromise. Findings on physical examination included decreased cervical spine range of motion and decreased sensory sensation in the upper and lower extremities. Dr. Duke opined that the disc herniation was a result of the March 5, 1999 employment injury and recommended decompressive surgery. He concluded that the surgery would probably not result in a complete resolution of her symptoms and appellant was likely to have some residual sensory symptoms of the upper and lower extremities. On September 27, 2001 the Office accepted that the herniated disc at C5-6 with myelopathy was employment related and authorized surgery which was performed by Dr. Ogsbury on October 24, 2001. On November 26, 2001 appellant returned to limited duty for four hours a day, which was increased to six hours a day on December 31, 2001. In a report dated November 19 and December 17, 2001, he noted appellant's complaint of bilateral leg weakness and very slow improvement.

Appellant came under the care of Dr. Christopher J. Centeno, a Board-certified physiatrist. In a March 19, 2002 report, he noted appellant's complaints of daily left hip, groin and foot pain with gait problems. Physical findings included a passive neck flexion test causing lower extremity numbness and hyperreflexia in the left lower extremity with weakness in the left peroneals causing excessive pronation of the left foot and ankle, significant myofascial tightness in the upper lumbar spine and hip adductors/psoas causing decreased hip extension and ongoing pain in the right hip girdle.[4] An April 5, 2002 MRI scan of the lumbar spine was interpreted as demonstrating facet arthrosis from L1-2 through L5-S1, producing dorsal canal compromise,

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[2] In May 1999, appellant transferred her employment from the employing establishment to the U.S. Mint.

[3] This was demonstrated on MRI scan dated February 13, 2001.

[4] Dr. Centeno's physicians' assistant, Shannon L. Bock, also submitted treatment notes. Appellant underwent physical therapy.

congenital spinal stenosis at the L4-5 level with superimposed L4-5 disc degenerations associated with a tiny disc bulge producing severe central canal stenosis in conjunction with multifactorial degenerative changes and thecal sac constriction. Additional narrowing and associated disc bulges with canal stenosis were found at L2-3, L3-4 and L5-S1 and moderate to severe left L4-5 neural foraminal disc bulging and mild bilateral L5-S1 and right L4-5 neural foraminal narrowing due to slight foraminal disc bulging. Moderate atrophy of the deep multifidus muscles at L3-4 and L4-5, plus severe atrophy of deep multifidus muscles at L5-S1 were noted. Dr. Centeno performed epidural injections from May through September 2002.

On August 10, 2003 appellant requested that the Office accept that the March 5, 1999 employment injury also caused deterioration of the right hip joint, the need for orthoses because her left foot did not hold its correct position due to nerve damage, lumbar and thoracic spine misalignments and inability to sleep through the night. She also requested therapeutic massage therapy. By letter dated August 12, 2003, the Office informed appellant of the evidence needed to support her claim to expand the accepted conditions.

Dr. Centeno submitted a September 11, 2003 report in which he described appellant's treatment course and opined that she had L4-5 stenosis secondary to a disc bulge which was irritating the L4 nerve root. He noted MRI scan evidence of decreased recruitment and firing in the left tibialis anterior in the distribution of the left L4 nerve root, where she had L4-5 stenosis at the exit zone. Dr. Centeno opined that this was consistent with some of the weakness she reported in the peroneals and was directly related to appellant's left foot drop which had altered her gait and caused the majority of her weight to be borne on the right. Dr. Centeno noted examination findings of a positive right Trendelenburg test and right gluteus medius weakness which could be related to the lumbar findings as well as overall neural dural irritation, secondary to cervical stenosis. He opined that her altered gait also altered her pelvic mechanics, resulting in right hip pain.

In an October 10, 2003 report, an Office medical adviser reviewed the medical record, advising that he saw no imaging reports of appellant's hip or left foot and no opinion discussing the causal relationship between these conditions and her employment injury. He concluded:

> "I would recommend a second opinion on this patient to determine the extent of injury based on mechanisms and medical probability of association to current symptoms. Establishing the diagnoses would help to determine that for which [the Office] is responsible. Since there is not a relatable injury to the left foot and right hip, the request for therapy to the two areas should not be approved. Likewise for gait therapy."

By decision dated October 21, 2003, the Office denied appellant's requests for gait and massage therapy because her left foot and right hip conditions had not been accepted as employment related. In an unsigned report dated October 28, 2003, Dr. Centeno noted that she had constant foot drop and requested that the Office accept that appellant's left hip and foot conditions were employment related, stating that these were caused by "the cervical incomplete spinal cord injury."

In a November 12, 2003 decision, the Office denied the claim on the grounds that the medical evidence did not support that appellant's right hip and left foot disorder were caused or aggravated by her accepted injury. Appellant, through counsel, timely requested a hearing that was held on July 19, 2004. At the hearing, her attorney argued that appellant sustained a double crush injury and, in the least, she should be referred for a second opinion evaluation. Appellant described her injury and noted that she now had pain in her heel and right hip with numbness in all extremities. She stated that she last worked for the employing establishment on May 27, 1999 and had taken a buy-out and retired from her employment on August 30, 2003.

Appellant submitted duplicates of medical evidence previously of record, a right hip x-ray report dated March 17, 2000 which demonstrated mild degenerative femoral head spurring and was otherwise unremarkable and cervical spine MRI scan reports dated March 7 and April 25, 2001 and April 19, 2002. The latter study demonstrated status post anterior spinal fusion at C5-6 with mild residual spinal canal stenosis without evidence of persistent cord compression and focal atrophy at C5-6 with small intramedullary signal abnormalities, unchanged since the April 25, 2001 examination. In an unsigned March 14, 2001 report, Dr. Ellis noted that appellant had trouble with her left hip and foot and stated that she had been told she had plantar fasciitis. He diagnosed a long history of pain in the neck with some symptoms in both arms. On November 14, 2001 Dr. Ellis noted that appellant was two to three weeks post neck surgery with continued pain. In a form report dated February 4, 2002, he advised that she had work-related diagnoses of status post fusion and right hip and ankle pain. Dr. James P. McElhinney, Board-certified in orthopedic surgery, provided an unsigned December 15, 2003 report in which he noted a history that appellant fell in 1999, slamming her left elbow and hip, with subsequent neck problems and cervical fusion. He noted her complaint of pain in her right hip which she thought was caused by limping on her left leg for so long. Dr. McElhinney noted pelvic and right hip degenerative changes found on x-ray and diagnosed degenerative arthritis of the hips. He concluded:

> "[Apellant] is very concerned that this is related to her fall. At four years afterwards, it is very difficult for me to associate it with the fall. This is bilateral hip arthritis and is common without having falls. I am, however, unable to rule this out specifically either."

In unsigned reports dated July 29 and September 16, 2004, Dr. Centeno, noted appellant's complaints of numbness in all extremities and foot drop and opined that from a clinical standpoint, her upper and lower extremity "issues" were related to the incomplete spinal cord "issue." An unsigned October 5, 2004 cervical test performed for Dr. Centeno demonstrated decreased range of motion for left and right rotation, left and right lateral flexion and extension, with a neck disability index score of 34 percent, indicating that appellant perceived herself as having a moderate disability. A right hip x-ray dated November 4, 2003 was reported as demonstrating moderate to severe degenerative joint disease.

By decision dated October 14, 2004, an Office hearing representative affirmed the November 12, 2003 decision, finding that the medical evidence of record did not establish that appellant's right hip and left foot complaints were related to the March 5, 1999 employment injury.

LEGAL PRECEDENT

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[5] 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.[6] 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.[7]

ANALYSIS

The Board finds that appellant has failed to establish that her right hip and left foot conditions were caused by the March 1999 employment injury. The medical reports that discuss the cause of her left foot and right hip condition include the September 11, 2003 report in which Dr. Centeno indicated that she had L4-5 stenosis secondary to a disc bulge as confirmed by MRI scans and opined that this was directly related to her left foot drop which altered her gait, causing the majority of appellant's weight-bearing to be on the right. He also stated that this could also be secondary to cervical stenosis.

A lumbar condition has not been accepted as related to the March 5, 1999 injury. Dr. Centeno did not provide a rationalized explanation of how the slip and fall caused her lumbar stenosis which he opined resulted in her left foot drop. Furthermore, in his October 28, 2003 report, Dr. Centeno advised that appellant's left hip condition was employment related and did not mention the right. In this report, he opined that this was due to her cervical spine injury. Dr. Centeno's reports dated July 29 and September 16, 2004 do not provide a rationalized opinion explaining how the 1999 employment injury caused her current condition. He failed to provide a full history of the accepted injury or explain how appellant's hip and lower extremity symptoms, noted in 2001, were caused or aggravated by the injury to her arm and cervical spine. As noted above, the opinion 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.[8] The opinion of Dr. Centeno is of diminished probative value.

In a report dated December 15, 2003, Dr. McElhinney advised that it was difficult for him to associate appellant's degenerative hip condition to the 1999 injury, stating that, while he

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[5] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[6] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[7] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[8] *Leslie C. Moore, supra* note 6.

could not specifically rule it out, it was very common without having falls. While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[9] Dr. McElhinney's opinion on causal relationship is equivocal and of diminished probative value.

The Board notes that, although the Office medical adviser noted that appellant could be referred for a second opinion evaluation, the burden remains on her to establish her claim that her left foot and right hip conditions are employment related.[10]

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that her right hip and left foot conditions were causally related to the March 5, 1999 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 14, 2004 be affirmed.

Issued: December 6, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[9] *Patricia J. Glenn*, 53 ECAB 159 (2001).

[10] 20 C.F.R. §§ 10.115(f); 10.330; *Dennis M. Mascarenas, supra* note 7.