

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

---

M.S., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Media PA, Employer

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 07-1978  
Issued: May 19, 2008**

*Appearances:*  
Thomas R. Uliase, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 24, 2007 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' hearing representative's merit decision dated February 23, 2007 finding that she had not established a recurrence of disability causally related to her accepted employment injury. Pursuant to 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 has met her burden of proof in establishing that she sustained a recurrence of disability on September 2, 2000 causally related to her August 9, 2000 employment injury.

**FACTUAL HISTORY**

This case has previously been on appeal before the Board. On August 9, 2000 appellant, then a 56-year-old letter carrier, bruised her left forearm and sustained a lumbosacral strain when a large oak tree fell on her mail truck. She returned to work on August 10, 2000. The Office

accepted her claim for lumbar strain and contusion of the left forearm. Appellant filed a recurrence of disability claim on March 15, 2001 alleging that she stopped work on September 2, 2000 and March 2, 2001 due to her accepted employment injury of August 9, 2000. She stated that she performed her full duties following the injury with pain and that her comfort level had decreased. On April 16, 2001 Dr. Howard S. Lubin, an osteopath, diagnosed left hip joint pain, preexisting, which was aggravated by the trauma of August 9, 2000, lumbar radiculopathy aggravated by the employment injury, bilateral sacroiliac strain, cervical strain and myositis and myofasciitis of the lumbar and thoracic paraspinal muscles. The Office referred appellant for a second opinion examination. On November 28, 2001 Dr. Richard J. Mandel, a Board-certified orthopedic surgeon, opined that the August 9, 2000 incident resulted only in a mild lumbar strain and abrasion of the left forearm from which appellant had recovered. He found that appellant had no work restrictions due to the August 2000 employment injury and exhibited no residuals. By decisions dated December 5, 2001 and October 24, 2002, the Office denied appellant's claim for recurrence of disability beginning September 2, 2000 finding that Dr. Mandel's report was entitled to the weight of the medical evidence. On June 12, 2003 the Board found that there was an unresolved conflict of medical opinion evidence between Dr. Lubin and Dr. Mandel which required referral to an impartial medical specialist.<sup>1</sup>

On October 27, 2003 the Office referred appellant for an impartial medical examination with Dr. Richard G. Schmidt, a Board-certified orthopedic surgeon. In a report dated November 23, 2003, Dr. Schmidt noted appellant's history of injury and medical treatment. He performed a physical examination and found that appellant had normal alignment of the spine, with no spasm. Dr. Schmidt also found that appellant's diagnostic studies demonstrated facetar arthritis, but no disc herniation. He stated that appellant exhibited no objective evidence of residuals of the August 9, 2000 employment injury. Dr. Schmidt stated: "I would note that it is not uncommon for patients with significant osteoarthritis of the hip to have lower back pain referred to the lower back region." He found that appellant's low back was normal on examination with no evidence of radiculopathy or sciatica. Dr. Schmidt noted that appellant required restrictions due to her preexisting left hip condition, but stated that this condition was not aggravated by the August 9, 2000 employment injury. He concluded that appellant had fully recovered from her employment injury.

By decision dated January 6, 2004, the Office denied appellant's claim for recurrence of disability on September 2, 2000 due to her August 9, 2000 employment injury. Appellant, through her attorney, requested an oral hearing on January 8, 2004. By decision dated May 11, 2004, the hearing representative vacated the June 6, 2004 decision and remanded the case to the Office in order that Dr. Schmidt could review the statement of accepted facts and determine whether appellant's medical conditions and disability after September 2, 2000 were due to the August 9, 2000 employment injury.

Dr. David N. Bosacco, a Board-certified orthopedic surgeon, completed a report on March 26, 2004 and reviewed appellant's history of injury as well as diagnostic studies. He opined that appellant sustained a lumbar sprain and strain with internal disc disruption at L4-5 and aggravation of radiculopathy at L4-5 as well as aggravation of degenerative arthritis of the

---

<sup>1</sup> Docket No. 03-633 (issued June 12, 2003).

left hip. Dr. Bosacco stated that appellant's left hip arthritis worsened following the August 9, 2000 employment injury "both symptomatically and radiologically." On April 6, 2004 he opined that appellant's employment incident was consistent with her ongoing conditions. In a note dated June 4, 2004, Dr. Bosacco stated that appellant stopped work on September 2, 2000 due to symptoms from her August 9, 2000 employment injury.

In a supplemental report dated August 12, 2004, Dr. Schmidt reviewed the statement of accepted facts as well as the medical reports of record. He stated: "I believe that [appellant] recovered from her diagnosis of lumbar sprain and left forearm contusion. [Appellant] does have preexisting degenerative joint disease and lumbar disc disease, but I do not see any aggravation of this condition or worsening of this condition as a result of the episode of August 9, 2000 or when she came out of work on August 11, 2000.

The Office requested an additional explanation from Dr. Schmidt on September 20, 2004 for his stated conclusion. Dr. Schmidt responded on November 28, 2004 and noted that his physical examination of appellant on November 24, 2004 showed no evidence of radiculopathy or sciatica. He further noted that appellant did not offer any radicular complaints at that time. Dr. Schmidt stated that appellant's September 8, 2000 electromyogram (EMG) showed only mild chronic L4-5 radiculopathy, but no acute radiculopathy. He opined: "A chronic situation obviously would be something in place for a long period of time which would clearly transcend a date of August 9, 2000. The EMG study of August 8, 2000 did not show any acute changes and, therefore, it is clear that appellant did not experience any acute radiculopathy or any aggravation of a chronic radiculopathy." Dr. Schmidt also based his opinion on the lack of disc space narrowing and malalignment shown on appellant's November 2, 2000 x-rays, the lack of acute changes on the October 17, 2002 x-rays and the lack of acute changes on the February 12, 2002 computerized axial tomography. He concluded that appellant fully recovered from the August 8, 2000 employment injury.

By decision dated December 23, 2004, the Office denied appellant's claim for recurrence on September 2, 2000. Appellant requested an oral hearing on December 28, 2004. In a decision dated September 1, 2005, the hearing representative set aside the Office's December 23, 2004 decision and remanded the case for the Office to request an additional supplemental report from Dr. Schmidt addressing whether the August 9, 2000 employment injury aggravated her preexisting left hip condition.

In a letter dated January 31, 2006, the Office requested that Dr. Schmidt address whether the August 9, 2000 employment injury aggravated appellant's preexisting left hip condition or degenerative joint disease.

On January 30, 2006 Dr. Bosacco opined that, as a result of her August 9, 2000 employment injury, appellant sustained contusion and lumbar sprain with exacerbation of lumbar radiculopathy and internal disc disruption syndrome at L4-5. He also diagnosed sprain left knee with meniscal tear. Dr. Bosacco reviewed appellant's February 12, 2002 discogram and found internal disc disruption syndrome at L4-5. He noted that appellant previously sustained a left hip fracture in 1985, which resulted in degenerative arthritis. Dr. Bosacco found that a March 12, 2004 magnetic resonance imaging scan showed a tear of the posterior horn of the medial meniscus as well as tricompartmental osteoarthritis.

Dr. Schmidt responded to the Office's requests for information on March 12, 2006. He stated that the August 9, 2000 employment injury did not aggravate appellant's preexisting degenerative joint condition. Dr. Schmidt noted that on August 15, 2000 appellant did not report a hip condition, that contemporaneous x-rays showed old chronic changes and no evidence of post-traumatic arthritis. He stated that there was no indication of any fracture or acute structural alteration of the left hip as a result of the August 9, 2000 employment injury and that in his opinion appellant's work injury did not result in any aggravation of her preexisting degenerative joint disease.

In a report dated May 26, 2006, Dr. Bosacco opined that appellant sustained a sprain and aggravation of degenerative arthritis of the left hip due to her August 9, 2000 employment injury.

By decision dated July 24, 2006, the Office denied appellant's claim for a recurrence of disability on or after September 2, 2000 finding that Dr. Schmidt's reports were entitled to the weight of the medical opinion evidence. Appellant, through her attorney, requested an oral hearing on July 27, 2006.

Appellant testified at the oral hearing on December 12, 2006. By decision dated February 23, 2007, the hearing representative found that Dr. Schmidt's reports were entitled to the weight of the medical opinion evidence and established that appellant had not sustained a recurrence of disability on or after September 2, 2000 due to her accepted employment injury of August 8, 2000.

### **LEGAL PRECEDENT**

A recurrence of disability is the 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 which 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.<sup>2</sup> Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. The burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concluded that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician's conclusion.<sup>3</sup>

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury. In this regard, medical evidence

---

<sup>2</sup> 20 C.F.R. § 10.5(x).

<sup>3</sup> *Ricky S. Storms*, 52 ECAB 349 351-52 (2001).

of bridging symptoms between the recurrence of the accepted injury must support the physician's conclusion of a causal relationship. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>4</sup>

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background must be given special weight.<sup>5</sup>

### ANALYSIS

The Office referred appellant to Dr. Schmidt, a Board-certified orthopedic surgeon, to resolve a conflict of medical opinion evidence regarding whether appellant had continuing medical residuals and disability on or after September 2, 2000 due to her accepted employment injuries of lumbar strain and contusion of the left forearm. He submitted a report dated November 23, 2003, which found facetar arthritis with no disc herniation and no residuals of the August 9, 2000 employment injury. Dr. Schmidt replied to a request for a supplemental report on November 28, 2004 and stated that appellant did not demonstrate radiculopathy or sciatica during his November 23, 2003 examination. He reviewed appellant's September 8, 2000 EMG and stated that her chronic radiculopathy predated her August 9, 2000 employment injury. Dr. Schmidt found that, as the EMG did not demonstrate acute changes, appellant did not experience an aggravation of her chronic radiculopathy on August 9, 2000. He also found that the remainder of appellant's diagnostic testing failed to demonstrate acute changes following her accepted employment injury. Dr. Schmidt opined on March 12, 2006 that the accepted employment injuries did not aggravate appellant's preexisting degenerative joint condition. He noted that appellant did not report a hip injury on August 15, 2000, that there was no indication of fracture or other structural alteration of appellant's left hip immediately following the August 9, 2000 employment injury.

Dr. Schmidt was designated the impartial medical examiner to resolve a conflict of medical opinion evidence between appellant's physician, Dr. Lubin, an osteopath, and the Office second opinion physician, Dr. Mandel, a Board-certified orthopedic surgeon, regarding appellant's continuing disability and medical residuals due to her accepted employment injury. Dr. Schmidt based his reports on a proper history of injury, including the statement of accepted facts, reviewed the medical evidence and concluded that appellant had no ongoing medical condition or disability due to her August 9, 2000 employment injury. He noted that his physical examination and review of diagnostic testing did not support that appellant had sustained an aggravation of her preexisting degenerative joint disease in the left hip and that appellant had no radicular symptoms when he examined her. Dr. Schmidt provided additional medical reasoning supporting his conclusions, noting that the diagnostic testing immediately following appellant's employment injury did not demonstrate acute changes resulting from the employment injury, but instead demonstrated only chronic radiculopathy which predated the August 9, 2000 employment

---

<sup>4</sup> *Id.*

<sup>5</sup> *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

injury. For these reasons, the Board finds that Dr. Schmidt's reports are sufficient to resolve the existing conflict of medical opinion evidence between Dr. Lubin and Dr. Mandel thereby constituting the special weight of the medical evidence.

Appellant submitted medical reports from Dr. Bosacco, a Board-certified orthopedic surgeon, who initially diagnosed lumbar strain and sprain with internal disc disruption at L4-5 and aggravation of radiculopathy at L4-5 as well as sprain and aggravation of degenerative arthritis of the left hip due to the August 9, 2000 employment injury. Dr. Bosacco attributed appellant's recurrence of disability on September 2, 2000 to her employment injury. On January 30, 2006 he attributed exacerbation of lumbar radiculopathy and internal disc disruption syndrome at L4-5 to the August 9, 2000 employment injury. Dr. Bosacco also diagnosed left knee sprain with a meniscal tear. He noted that appellant's degenerative arthritis of the left hip was preexisting due to a 1985 injury. Dr. Bosacco reviewed diagnostic studies in reaching his conclusions. While he opined that appellant's currently conditions and disability were due to her accepted employment injury, he did not provide any medical reasoning in support of his opinions. Dr. Bosacco did not provide a clear history of injury, a definite medical history, detailed findings on physical examination or a clear analysis of the diagnostic studies regarding traumatic versus chronic conditions. He offered two different opinions regarding appellant's left hip condition and failed to clearly explain whether or not he believed appellant's left hip condition was aggravated by her employment injury. As his report lack the necessary factual background, medical findings and detailed reasoning supporting a causal relationship between appellant's current conditions and disability and her accepted employment injury, his reports are not sufficient to either create a new conflict or overcome the weight of Dr. Schmidt's well reasoned reports. For these reasons, the Board finds that appellant has not met her burden of proof in establishing a recurrence of disability.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing a recurrence of disability on September 2, 2000 causally related to her August 9, 2000 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 23, 2007 decision of the Office of Workers' Compensation Programs' is affirmed.

Issued: May 19, 2008  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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