United States Department of Labor
Employees' Compensation Appeals Board

J.P., Appellant	)	
and	)	**Docket No. 10-1708**
	)	**Issued: April 7, 2011**
U.S. POSTAL SERVICE, SEATTLE PERFORMANCE CLUSTER, Seattle, WA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 15, 2010 appellant filed a timely appeal from the April 15, 2010 merit decision of the Office of Workers' Compensation Programs terminating his compensation. 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 the Office met its burden of proof to terminate appellant's compensation effective February 16, 2010 on the grounds that he had no residuals of his June 7, 2008 employment injury after that date.

[1] For Office decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. *See* 20 C.F.R. §§ 501.2(c) and 501.3.

FACTUAL HISTORY

The Office accepted that on June 7, 2008 appellant, then a 36-year-old custodian, sustained a right-sided lumbosacral strain due to lifting a hamper filled with trash. It paid him compensation for periods of disability.

On March 19, 2009 Dr. Richard H. Gascoigne, an attending Board-certified family practitioner, indicated that appellant reported having a little pain in his right low back and buttock and some pain in his legs with intermittent tingling. He stated that on examination heel and toe raising tests were normal, reflexes were normal at the knees and ankles and sensation was good down the legs. There was a little tenderness at the right paraspinous muscles, but nothing was palpated.

On June 7, 2009 Dr. Charles M. Colwell, an attending Board-certified physical medicine and rehabilitation physician, stated that appellant reported loss of feeling in his right leg, but noted that the distribution of the described sensory loss was nondermatomal. On examination there was minimal tenderness over the dorsal processes of the lumbar spine to percussion and the paraspinous muscle masses did not exhibit spasm. Dr. Colwell indicated that the magnetic resonance imaging (MRI) scan testing on the low back was unremarkable, showing only mild degenerative disc disease at L3-4 without significant central or lateral narrowing.[2] Dr. Gascoigne diagnosed resolving mild lumbar strain and posited that the predominance of appellant's symptoms appeared to be caused by his piriformis syndrome. He found that the persistence of appellant's reported symptoms warranted an electromyogram (EMG) of the right lower extremity, but he expected this test to be totally normal.

The findings of June 23, 2009 EMG testing of appellant's right leg were normal. There was no evidence of a right lumbosacral radiculopathy, right peroneal nerve entrapment, right peripheral neuropathy or dysfunction of the right S1 root. No denervation potentials were seen in the right leg.

On July 16, 2009 Dr. Colwell indicated that examination showed no sensory deficit evident in appellant's right leg. Internal and external rotation of the right hip was unremarkable, right hip musculature was nontender to palpation and percussion of the lumbar spine did not produce significant discomfort. Dr. Colwell diagnosed improving piriformis syndrome and continued dysesthesias without significant sensory loss.

In an August 18, 2009 report, Dr. Colwell indicated that appellant continued to have mild tenderness to percussion of the lower lumbar dorsal processes. Paraspinous muscle masses did not exhibit spasm and there was mild tenderness over the right iliolumbar ligament and mild to moderate tenderness over the right S1 joint. Dr. Colwell diagnosed improving lumbar strain and stated, "I do not think that his leg symptoms are lumbar origin, but instead consider them secondary to a hip strain with a mild piriformis syndrome." In an August 18, 2009 letter recommending a stationary exercise bicycle for reconditioning, he stated that appellant injured his low back and right hip on the job on June 7, 2008. Dr. Colwell indicated that appellant had

[2] The record contains the results of MRI scan testing from March 19 and June 3, 2009 showing mild degenerative changes of the low back.

not been healing as expected and noted, "After evaluating him, it is my clinical opinion that he has developed a chronic right performance syndrome as a result of his work-related injuries."

On September 8, 2009 Dr. Colwell stated that appellant continued to have complaints of loss of sensation in his right leg which encompassed the entire leg and went completely up to the hip. He indicated that he was treating a lumbosacral strain with a piriformis syndrome and noted that straight leg raising was negative to 100 degrees and that the patellar, hamstrings and Achilles tendons were symmetrical. There was sensory hypoesthesia on the lateral aspect of the right calf and the dorsiflexors of the great toe and the dorsiflexors of the ankle were normal and symmetrical. Dr. Colwell diagnosed ongoing symptoms consistent with performance syndrome and noted that the findings of MRI scan and EMG testing were essentially normal. On September 22, 2009 he stated that appellant reported that he was improving steadily but still had intermittent problems with sensory loss affecting his right leg. Dr. Colwell indicated that he was treating right piriformis syndrome and noted that examination showed minimal sensory loss in the right leg.

The Office referred appellant to Dr. George Harper, a Board-certified orthopedic surgeon, for examination and evaluation of whether appellant continued to have residuals of his June 7, 2008 employment injury.

In a November 9, 2009 report, Dr. Harper detailed appellant's factual and medical history, including the circumstances of the June 7, 2008 employment injury, and noted that he currently reported pain and numbness in his right leg, burning sensation and numbness in his groin and pain in his right buttock and sacroiliac joint. On lumbar range of motion, appellant could forward flex to 80 degrees until his fingertips reached his feet without significant discomfort. He had normal motion in extension, but did have discomfort with full extension. Dr. Harper noted that lateral bending was to full range, but that left lateral bending caused a pull around the area of the right sacroiliac joint. On palpation, there was no tenderness in the midline lumbar spine and there was no paravertebral muscle spasm, guarding or tenderness. Appellant did show some tenderness in the area of the sacroiliac joints and right sciatic notch. Dr. Harper found that straight leg testing was negative for sciatic stretch signs at 90 degrees. On sensation to light touch of the right leg, appellant had decreased sensation to light touch from the mid thigh distally on the right side, but sharp-dull discrimination by and large seemed to be intact. Examination of the hips showed full motion upon flexion, extension, abduction and internal and external rotation, all without any significant discomfort. Dr. Harper found no suggestion of any intrinsic hip joint pathology.

Dr. Harper diagnosed lumbar strain with subjective radiculitis in the right leg by history but found no objective findings of this condition as a result of his physical examination. He noted that appellant had an essentially normal MRI scan of his lumbar spine and a normal EMG of his right leg. Dr. Harper concluded that it appeared "that objectively the work-related strain has resolved." He found that the June 7, 2008 employment incident did not materially affect the spine or cause a right hip injury. Dr. Harper indicated that the cause of appellant's ongoing symptoms was unclear but posited that he might have some scarring around his lumbar roots that gave radicular symptoms without hard neurologic findings. He found that appellant could perform his regular work in a full-time basis. Dr. Harper did not recommend any further

treatment noting that his complaints were subjective and not supported by objective examination and diagnostic test findings.

In a January 11, 2010 letter, the Office advised appellant that it proposed to terminate his compensation for wage-loss and medical benefits on the grounds that he no longer had residuals of his June 7, 2008 employment injury. It indicated that the weight of the medical opinion regarding work-related residuals rested with the November 9, 2009 report of Dr. Harper. The Office provided appellant 30 days from the date of the letter to provide evidence or argument contesting the proposed termination.

Appellant submitted the findings of the February 6, 2010 MRI scan testing of his lumbar spine which showed mild disc bulges at L4-5 and L5-S1 with no effect on the nerve roots. The bones appeared intact and normally aligned and the findings were not grossly different from those found in June 2009. The findings of February 2, 2010 MRI scan testing of appellant's right hip showed normal results with no cysts, osteophytes, joint space narrowing, lytic lesions or fractures.

In a February 16, 2010 decision, the Office terminated appellant's compensation for wage-loss and medical benefits effective February 16, 2010 based on the November 9, 2009 report of Dr. Harper.

In a March 12, 2010 letter, appellant requested reconsideration of his claim indicating that he continued to have symptoms in his right low back and right hip. In a February 4, 2010 report, Dr. Gascoigne diagnosed back pain, leg paresthesias and hip pain and indicated that he was "not sure if this is a [Labor and Industries] claim or not."

In an April 15, 2010 decision, the Office affirmed its February 16, 2010 decision. It indicated that the termination of appellant's compensation was justified by the November 9, 2009 report of Dr. Harper.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,[3] once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.[4] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[5] Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[6]

[3] 5 U.S.C. §§ 8101-8193.

[4] *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[5] *Id.*

[6] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

ANALYSIS

The Office accepted that on June 7, 2008 appellant sustained a right-sided lumbosacral strain due to lifting a hamper filled with trash. It paid him compensation for periods of disability. The Office terminated appellant's compensation effective February 16, 2010 based on the November 9, 2009 report of Dr. Harper, a Board-certified orthopedic surgeon who served as an Office referral physician.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Harper. The report of Dr. Harper establishes that appellant had no residuals of his June 7, 2008 employment injury after February 16, 2010.

In his November 9, 2009 report, Dr. Harper noted that on physical examination appellant had essentially normal range of motion of his back and legs with some subjective pain and sensory loss complaints.[7] He found that both the examination and diagnostic test findings showed that the June 7, 2008 lumbosacral strain had resolved and that appellant did not sustain any work-related injury to his right hip or buttock. Dr. Harper found that appellant could return to his regular work on a full-time basis.

The Board has carefully reviewed the opinion of Dr. Harper and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Harper provided a thorough factual and medical history and accurately summarized the relevant medical evidence.[8] He provided medical rationale for his opinion by explaining that the continued existence of work-related lumbosacral strain was not supported by the examination and diagnostic testing findings. Dr. Harper indicated that the June 7, 2008 employment incident did not materially affect appellant's spine or cause a right hip injury. He provided a possible nonwork-related cause for appellant's ongoing symptoms by noting that he might have some nonwork-related scarring around his lumbar roots that gave radicular symptoms without hard neurologic findings.

The Board notes that the reports of appellant's attending physicians from around the time of the referral to Dr. Harper did not contain a clear opinion that he continued to have residuals of his June 7, 2008 work-related right lumbosacral strain. In several reports from mid 2009, Dr. Colwell, an attending Board-certified physical medicine and rehabilitation physician, made note of a lumbosacral strain. However, by the fall of 2009, he appeared to attribute appellant's symptoms to a chronic right performance syndrome or piriformis syndrome. Neither of these conditions has been accepted by the Office as work related. Dr. Colwell did not provide any description of the causes of these conditions. Although he indicated that the chronic right

[7] On lumbar range of motion, appellant could forward flex to 80 degrees until his fingertips reached his feet without significant discomfort. Dr. Harper noted that lateral bending was to full range, but that left lateral bending caused a pull around the area of the right sacroiliac joint. On palpation, there was no tenderness in the midline lumbar spine and there was no paravertebral muscle spasm, guarding or tenderness. Dr. Harper found that straight leg testing was negative for sciatic stretch signs at 90 degrees. On sensation to light touch of the right leg, appellant had decreased sensation to light touch from the mid thigh distally on the right side, but sharp-dull discrimination by and large seemed to be intact.

[8] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

performance condition was work related, he did not describe the mechanism through which the June 7, 2008 work incident or some other work factors could have caused this condition.

The Office properly found that the weight of the medical opinion regarding work-related residuals rested with the opinion of Dr. Harper. Therefore, it properly terminated appellant's compensation effective February 16, 2010.[9]

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective February 16, 2010 on the grounds that he had no residuals of his June 7, 2008 employment injury after that date.

ORDER

IT IS HEREBY ORDERED THAT the April 15, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 7, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[9] Appellant submitted additional evidence after the Office's April 15, 2010 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).