

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

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C.F., Appellant )

and )

**DEPARTMENT OF THE INTERIOR, BUREAU  
OF LAND MANAGEMENT, Reno, NV,  
Employer** )

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**Docket No. 10-2316  
Issued: July 15, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 13, 2010 appellant filed a timely appeal from the June 25, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his recurrence claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 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 established that he sustained a recurrence of a medical condition causally related to the July 24, 1998 employment injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On July 27, 1998 appellant, then a 38-year-old horse wrangler, filed a traumatic injury claim alleging that on July 24, 1998 he injured his left leg when a horse bit him and knocked him down. The record reflects that his case was administratively closed due to medical inactivity.

On March 23, 2010 appellant filed a recurrence claim, requesting medical treatment commencing March 12, 2010. The claim form did not state a claim for any lost time. Appellant stated that his left hip was never the same following the July 24, 1998 injury and worsened to the point that it was limiting his work and personal life. He provided medical treatment records for the period September 3, 1998 to January 15, 1999 regarding his July 24, 1998 claim.

In a March 23, 2010 medical report, Dr. John Zebrack, a Board-certified orthopedic surgeon, noted that in 1998 appellant sustained a left hip strain with a contusion due to a horse picking him up and throwing him to the ground at work. Appellant did not have any previous hip problems. He complained of persistent and worsening pain since the 1998 incident that interfered with his quality of life. Dr. Zebrack diagnosed advanced left hip arthritis based on radiographic evidence and recommended a left total hip arthroplasty. He advised that it was certainly reasonable to assume that the left hip could be post-traumatic arthritis from the 1998 incident.

In a decision dated May 4, 2010, OWCP accepted appellant's claim for open wound of left buttock, resolved, contusion of left hip and sprain of hip and left thigh.

In a May 4, 2010 letter, OWCP advised appellant that the evidence submitted was insufficient to establish that his recurrence claim was related to the 1998 work injury and requested additional information. It specifically asked him to describe his work activities since returning to work on October 8, 1998 and list any new injuries either at work or elsewhere. OWCP also requested medical treatment records from December 17, 1998 to March 23, 2010 and a narrative medical report from a physician, including a history of the original injury, clinical findings, a firm diagnosis, results of treatments and tests and the physician's opinion, with stated medical reasons, regarding the relationship between the need for medical treatment and the accepted work-related condition. Appellant resubmitted the prior medical treatment records.

In a March 23, 2010 chart record, Dr. Zebrack examined appellant for chronic hip pain that was aggravated with activities, especially horseback riding. He provided a history that in 1998 appellant sustained a work injury when he was thrown from a horse. Appellant complained that his hip pain progressively worsened, particularly in the last six months. Upon examination, Dr. Zebrack noted that appellant walked with an antalgic gait favoring the left hip. Flexion was 90 degrees with pain and internal rotation 10 degrees with pain. Straight leg raise test was negative. Radiographs further revealed advanced left hip arthritis.

According to an April 8, 2010 discharge report, appellant underwent a left total hip arthroplasty for left hip endstage arthritis on April 5, 2010. In an April 5, 2010 radiology report, Dr. Colby Laughlin, a Board-certified diagnostic radiologist, noted a left hip prosthesis in place with a femoral component located within an acetabular component with no overlying Hemovac drain. He diagnosed post placement of left hip prosthesis.

In an April 14, 2010 chart record, Dr. Zebrack conducted a follow-up examination for appellant's total hip arthroplasty. He reported that appellant was doing well with no complaints. On May 5, 2010 Dr. Zebrack authorized restricted duty for appellant effective May 7, 2010 and completed a work status report. He noted that appellant's physical demand level was light and restricted appellant to occasionally lifting a maximum weight of 16 to 20 pounds, frequently lifting 8 to 10 pounds and constant lifting negligible while seated. Dr. Zebrack also noted that appellant complained of having some pain but was improving overall. He observed that appellant walked with a mildly antalgic gait with good motion and good leg lengths. Radiographs revealed a stable left total hip arthroplasty.

In a May 18, 2010 letter, Dr. Rick Swecker, a chiropractor, reported that he originally saw appellant in 2006 for evaluation and treatment of symptoms stemming from a work-related injury in July 1998. He noted that appellant's left hip and pelvic areas had been a source of constant pain and discomfort with the hip progressively worsening. Dr. Swecker opined that most of the symptoms appellant experienced were aggravations or exacerbations of the July 1998 injury. He explained that the intense pain appellant experienced indicated severe soft tissue damage in the hip joint most likely including the bursa and capsule. Over the years the joint continued to degenerate to the point where it became nearly bone on bone. Dr. Swecker believed that the recent hip replacement was directly related to the original injury and the subsequent stress placed on this joint by appellant's job. He further noted that appellant's work involved manual labor and intensive horseback riding.

In a May 27, 2010 letter, Dr. Stuart F. Pardee, a chiropractor, stated that appellant requested a letter providing an opinion regarding the causal relationship between his chronic hip problem and the 1998 work injury. He noted appellant's chief complaints of left hip and lower back pain and stated that appellant's problems began with the original injury when he was thrown about by a wild horse. Appellant stated that, ever since that incident, he has experienced left hip problems. Dr. Pardee concluded that he would support appellant's contention that all of his hip problems were from his original July 24, 1998 injury.

By decision dated June 25, 2010, OWCP denied appellant's recurrence claim on the grounds of insufficient evidence establishing that his current medical condition resulted from the accepted work injury.

### **LEGAL PRECEDENT**

Section 10.5(y) of OWCP's implementing federal regulations provide that a recurrence of medical condition means 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 condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment.<sup>2</sup> When a claim for a recurrence of medical condition is made more than 90 days after release from medical care, an employee is responsible for submitting a medical report that contains a description of objective findings and supports causal relationship between the employee's

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<sup>2</sup> 20 C.F.R. § 10.5(y); *Mary A. Ceglia*, 55 ECAB 626 (2004).

current condition and the previous work injury.<sup>3</sup> In order to establish that a claimed recurrence of medical condition was caused by the accepted injury, medical evidence bridging the symptoms between the present condition and the accepted injury must support the physician's conclusion of a causal relationship.<sup>4</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>5</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized medical opinion of whether there is a causal relationship between the claimant's diagnosed condition and the compensable 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.<sup>6</sup>

Furthermore, section 8101(2) of FECA provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. Without diagnosing a subluxation from x-ray, a chiropractor is not a physician under FECA and his opinion on causal relationship does not constitute competent medical evidence.<sup>7</sup>

### ANALYSIS

OWCP accepted that on July 24, 1998 appellant sustained a left buttock open wound, left hip contusion and hip and left thigh sprain. Appellant continued to work. On March 23, 2010 he submitted a recurrence claim for medical treatment alleging that his left hip condition had progressively worsened, ultimately resulting in arthritis and the need for left hip replacement surgery.

The Board finds that appellant failed to submit sufficient medical evidence to establish that he sustained a recurrence of a medical condition causally related to the July 24, 1998 employment injury. Appellant submitted various medical reports from Dr. Zebrack. In a March 23, 2010 medical report and chart record, Dr. Zebrack noted appellant's 1998 work injury and complaints of worsening hip pain since the original injury. He conducted an examination and diagnosed left hip arthritis. Dr. Zebrack opined that it was certainly reasonable to assume that appellant's left hip could be post-traumatic arthritis from his 1998 injury. To be considered rationalized medical opinion evidence, however, a physician's opinion must be supported by

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<sup>3</sup> *J.F.*, 58 ECAB 124 (2006); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (April 2011).

<sup>4</sup> *See Ronald A. Eldridge*, 53 ECAB 218 (2001); *C.W.*, Docket No. 07-1816 (issued January 16, 2009).

<sup>5</sup> *D.I.*, 59 ECAB 158 (2007); *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-658 (issued October 22, 2009).

<sup>6</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> 5 U.S.C. § 8101(2); *see generally Theresa K. McKenna*, 30 ECAB 702 (1979).

medical rationale explaining the nature of the relationship between the diagnosed condition and the claimant's employment factors.<sup>8</sup> Dr. Zebrack did not relate a full medical history from 1998 which established the progression of the arthritic process since 1998. His medical reports stated a conclusion, but did not provide a clear explanation with certainty as to how appellant's current hip condition was related to the July 24, 1998 work injury. Dr. Zebrack's stated assumption of causal relationship is speculative.<sup>9</sup> His report is of limited probative value.<sup>10</sup>

In an April 5, 2010 radiology report, Dr. Laughlin diagnosed post placement of left total hip arthroplasty but did not offer any opinion regarding the cause of appellant's hip condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>11</sup> This report is also insufficient to establish appellant's claim.

In the May 18, 2010 medical report, Dr. Swecker, a chiropractor, noted appellant's 1998 work injury and explained that, over the years, appellant's hip joint continued to degenerate to the point where it became nearly bone on bone and opined that appellant's recent hip replacement was directly related to his original 1998 injury and the subsequent stress placed on this joint by his job. Similarly, Dr. Pardee, a chiropractor, also concluded that appellant's current hip problems originated from his original July 24, 1998 work injury. The term "physician," however, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.<sup>12</sup> Neither Dr. Swecker nor Dr. Pardee diagnosed spinal subluxation and the record does not contain any x-rays demonstrating subluxation. Chiropractors are not physicians as defined and their reports are insufficient to establish appellant's recurrence claim.

Appellant's claim for medical treatment was properly denied due to his failure to submit medical evidence of bridging symptoms between his current condition in 2010 and the accepted work injury.<sup>13</sup> His last reported medical treatment before his alleged 2010 recurrence was January 15, 1999. Appellant did not submit a detailed medical report addressing the intervening years or need for medical treatment commencing on March 12, 2010 causally related to his accepted injury.

Appellant may submit new evidence or argument with a 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.

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<sup>8</sup> *S.D.*, 58 ECAB 713 (2007); *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>9</sup> Medical opinions based on an incomplete history or which are speculative are of diminished probative value. See *Cecelia M. Corley*, ECAB 662 (2005).

<sup>10</sup> See *S.S.*, Docket No. 10-146 (issued July 26, 2010).

<sup>11</sup> *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997).

<sup>12</sup> 5 U.S.C. § 8101(2); *McKenna*, *supra* note 7.

<sup>13</sup> *Ronald A. Eldridge*, *supra* note 4.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of his medical condition causally related to the July 24, 1998 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 25, 2010 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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