United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 17-1688**
	)	**Issued: December 13, 2018**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Hines, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 1, 2017 appellant, through counsel, filed a timely appeal from a March 24, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that following the March 24, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of disability on December 1, 2015 causally related to his accepted September 10, 2015 employment injury.

FACTUAL HISTORY

On September 10, 2015 appellant, a 41-year-old vocational nurse, filed a traumatic injury claim (Form CA-1) alleging that he injured his left hip and right lower back that same day as a result of being hit by a desktop. He stated that the desktop was leaning against a wall and was slightly blocking a portion of an office doorway when it fell on him at work. By decision dated October 16, 2015, OWCP accepted appellant's claim for left hip sprain and strain.

In a September 25, 2015 report, Dr. Abid Nazeer, a Board-certified psychiatrist, diagnosed major depressive disorder, single episode, unspecified and pain disorder associated with psychological factors and medical condition.

On October 16, 2015 Dr. Sunil Malkani, a Board-certified internist, diagnosed major depressive disorder, single episode, unspecified, pain disorder associated with psychological factors and medical condition, bilateral hip joint arthritis, chronic radicular low back pain, idiopathic thrombocytopenic purpura, mix hyperlipidemia, impaired fasting glucose, primary osteoarthritis of both knees, and gastroesophageal reflux disease with esophagitis.

In an October 23, 2015 report, Dr. Nazeer opined that appellant's conditions were directly related to his September 10, 2015 work injury due to post-trauma anxiety and worsening of depressive symptoms as a sequela to the injury.

In a hospital report dated October 26, 2015, Dr. David Sanchez, a Board-certified emergency medicine specialist, reported that appellant visited the emergency department due to left hip pain. He noted that appellant had a history of severe osteoarthritis in the bilateral hips, worse in the left hip, and over the weekend his pain had been exacerbated. Appellant also indicated that he was waiting for a left hip replacement to be scheduled. Dr. Sanchez diagnosed hip pain and discharged appellant.

On November 13, 2015 appellant accepted a part-time, limited-duty assignment as a vocational nurse from the employing establishment. The duties included computer work, desktop and office work assignments; answering the telephone; providing customer service; and filing. The physical requirements included no lifting over five pounds and no pushing, kneeling, or squatting.

In a November 19, 2015 report, Dr. Parkson Lin, an emergency medicine physician, noted that appellant was treated in the emergency department that day for chronic left hip pain and was released to work, effective November 21, 2015.

On December 4, 2015 Dr. Malkani diagnosed tendinitis of the right wrist, osteoarthritis of the right wrist, and chronic pain disorder. He advised that appellant was unable to work due to joint pains.

On December 15, 2015 appellant filed a claim for wage-loss compensation (Form CA-7) for the period December 1 to 12, 2015 and continuing.

By development letter dated December 17, 2015, OWCP advised appellant of the deficiencies of his claim. It noted that he had not submitted any medical evidence in support of his claim and instructed him to provide medical documentation supporting total disability for the dates claimed. OWCP afforded appellant 30 days to submit additional evidence and provide his response.

In response, appellant submitted physical therapy reports dated October 2, 6, and 7, 2015.

In a hospital report dated November 19, 2015, Dr. Lin diagnosed other chronic pain, pain in left hip, and unilateral primary osteoarthritis of the left hip. He reported that appellant had constant throbbing in the left hip radiating into the groin. Dr. Lin noted that appellant had a history of osteoarthritis.

On January 5, 2016 appellant requested that OWCP expand his list of accepted conditions to include lumbar back injury/pain, likely strain, major depressive disorder (single severe without psychosis), and pain disorder with both medical and psychological factors.

An x-ray of the left hip dated September 12, 2015 demonstrated degenerative changes and no evidence for acute fracture or dislocation.

Appellant submitted reports dated October 8, 17, 28, and 31, November 12 and 18, and December 4, 2015 from Dr. Malkani who reiterated his diagnoses.

On December 1, 2015 Julie Morgan, a physician assistant, diagnosed continued severe bilateral hip pain from work-related injury and advised that appellant was totally disabled from work until surgical approval.

In a December 22, 2015 report, Dr. Nazeer continued to diagnose pain disorder with both medical and psychological factors and major depressive disorder, single, severe, without psychosis. He opined that appellant's work injury caused debilitating pain and a change in his level of functioning and independence. Dr. Nazeer explained that appellant's symptoms traversed both psychiatric and physical spheres and his total disability was expected to last at least one year.

On January 6, 2016 Dr. Benjamin Domb, a Board-certified orthopedic surgeon, noted that appellant had been under his care since July 28, 2015 after he injured both of his hips while he was at work, falling down stairs, in March 2015. He was diagnosed with labral tear of the right hip and left hip labral tear with significant amount of osteoarthritis. Dr. Domb opined that appellant was suffering with significant pain of both conditions and advised that he was totally disabled from work.

In a February 8, 2016 report, Dr. Domb noted that appellant had a work-related injury on September 10, 2015. He indicated that the injury was accepted for strain and sprain of the left hip, but appellant had also been diagnosed with a labral tear with left hip significant osteoarthritis. Dr. Domb opined that appellant was suffering significant pain from both conditions and was totally disabled from work, including light duty. He noted that appellant's disability was expected to last at least one year.

By decision dated March 23, 2016, OWCP denied appellant's claim for wage-loss compensation for the period commencing December 1, 2015.

On April 11, 2016 counsel requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted a September 15, 2015 report from Dr. Domb who released appellant to modified work/duty on September 22, 2015 with restrictions of no lifting greater than 5 to 10 pounds and no bending, kneeling, or squatting.

In a February 23, 2016 report, Dr. Glen Wurglitz, a clinical psychologist, diagnosed major depressive disorder, single episode, moderate and adjustment disorder, with depressed mood, moderate.

In an April 14, 2015 report, Dr. John A. Lombardi, an orthopedic surgeon, advised that appellant was not capable of performing any high-impact activities indefinitely.

A telephonic hearing was held before an OWCP hearing representative on December 15, 2016. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

Subsequently, appellant submitted a September 1, 2016 report from Dr. Martin Siems, a Board-certified orthopedic surgeon, who diagnosed probable shoulder impingement with mild-to-moderate acromioclavicular arthropathy and ruled out glenohumeral arthritis. Dr. Siems noted that appellant was having low back pain, bilateral hip pain, and bilateral shoulder pain.

On September 13, 2016 Dr. Siems diagnosed bilateral shoulder impingement syndrome, bilateral hip osteoarthritis, articular cartilage disorder of the right hip, and possible labral tear.

By decision dated March 24, 2017, OWCP's hearing representative advised appellant that it appeared that he was claiming a recurrence of disability and found that it was unclear why he stopped work on December 1, 2015. It denied his recurrence claim because the medical evidence of record was insufficient to establish a recurrence of disability causally related to his September 10, 2015 employment injury. OWCP's hearing representative further found that the evidence of record was insufficient to establish a return or increase of disability due to a consequential injury or condition stemming from appellant's accepted left hip conditions.

LEGAL PRECEDENT

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish by the weight of reliable, probative, and substantial evidence that the recurrence of disability is causally related to the original injury.[4] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally

[4] *See Robert H. St. Onge*, 43 ECAB 1169 (1992).

related to the employment injury.[5] Moreover, the physician's conclusion must be supported by sound medical reasoning.[6]

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.[7] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of causal relationship.[8] 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.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability on December 1, 2015 causally related to his accepted September 10, 2015 employment injury.

Appellant submitted a series of medical reports from attending physicians which the Board finds insufficient to establish the claim. The report from Dr. Lombardi failed to establish a medical diagnosis in connection with the injury. The Board finds that Dr. Sanchez' diagnosis of left hip pain is a description of a symptom rather than a clear diagnosis of the medical condition.[10] Although Dr. Wurglitz, Dr. Siems, Dr. Lin, and Dr. Malkani provided firm diagnoses, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[11] For these reasons, the above-noted evidence is insufficient to satisfy appellant's burden of proof with respect to causal relationship.[12]

Dr. Domb noted that appellant had been under his care since July 28, 2015 after he injured both of his hips while he was at work, falling down stairs, in March 2015. Appellant was diagnosed with labral tear of the right hip and left hip labral tear with a significant amount of

[5] Section 10.104(a)(b) of the Code of Federal Regulations provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The report should include the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions, and the prognosis. 20 C.F.R. § 10.104.

[6] *See supra* note 4.

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (January 2013); *see supra* note 4.

[8] For the importance of bridging information in establishing a claim for a recurrence of disability, *see Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 748 (1986).

[9] *See Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

[10] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[11] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018)*; D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] *See supra* notes 4 to 9.

osteoarthritis. Dr. Domb later reported that appellant had a work-related injury on September 10, 2015. He indicated that the injury had been accepted for strain and sprain of the left hip, but appellant had also been diagnosed with a labral tear with left hip significant osteoarthritis. Dr. Domb opined that appellant was suffering significant pain from both conditions and was totally disabled for work. The Board finds that Dr. Domb failed to provide sufficient medical rationale explaining how appellant's conditions were causally related to the September 10, 2015 employment injury, without an intervening injury or new exposure. Dr. Domb did not specifically address causal relationship between appellant's accepted conditions and his claimed recurrence of disability or consequential conditions. The need for rationale is particularly important as the evidence indicates that appellant had a preexisting bilateral hip condition.[13] Therefore, the Board finds that this evidence is insufficient to expand the acceptance of his claim or establish his claim for a recurrence.

In his reports, Dr. Nazeer diagnosed major depressive disorder, single episode, unspecified and pain disorder associated with psychological factors and medical condition. He opined that appellant's conditions were directly related to his September 10, 2015 work injury due to post-trauma anxiety and worsening of depressive symptoms as a sequela to the injury. In a December 22, 2015 report, Dr. Nazeer continued to diagnose pain disorder with both medical and psychological factors and major depressive disorder, single, severe, without psychosis. He opined that appellant's work injury caused debilitating pain and a change in his level of functioning and independence and explained that appellant's symptoms traversed both psychiatric and physical spheres. Dr. Nazeer's reports are insufficient to establish that appellant sustained a recurrence of his accepted medical conditions. He failed to provide sufficient medical rationale explaining how appellant's psychiatric and physical conditions were causally related to the September 10, 2015 work injury. The Board finds that the reports from Dr. Nazeer are insufficient to establish a consequential injury which was caused or aggravated by the accepted September 10, 2015 employment injury, without an intervening injury or new exposure. Therefore, the Board finds that this medical evidence is insufficient to establish his claim for a recurrence.

The September 12, 2015 x-ray demonstrates degenerative changes of the left hip, but the diagnostic study does not address the etiology of appellant's left hip condition. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between his employment duties and a diagnosed condition.[14]

Appellant also submitted evidence from physical therapists and physician assistants. These reports do not constitute competent medical evidence because certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[15] Consequently, their medical findings and/or opinions

[13] *See O.C.*, Docket No. 17-1175 (issued October 29, 2018); *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[14] *See S.G.*, Docket No. 17-1054 (issued September 14, 2017).

[15] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

are of no probative value and will not suffice for purposes of establishing entitlement to compensation benefits.[16]

As appellant has not submitted rationalized medical evidence sufficient to establish a recurrence of disability on December 1, 2015, causally related to his accepted September 10, 2015 employment injury, he has not met his burden of proof.

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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a recurrence disability on December 1, 2015 causally related to his accepted September 10, 2015 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[16] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. *Supra* note 7 at Chapter 2.805.3a(1) (January 2013).