United States Department of Labor
Employees' Compensation Appeals Board

C.V., Appellant	)	
and	)	**Docket No. 14-1940**
	)	**Issued: May 26, 2015**
DEPARTMENT OF DEFENSE, NATIONAL GEOSPATIAL INTELLIGENCE AGENCY, Springfield, VA, Employer	)	

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

Oral Argument held April 30, 2015

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 8, 2014 appellant filed a timely appeal from a March 19, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's medical and wage-loss compensation benefits effective March 10, 2014 as the accepted lumbar conditions, lumbar radiculitis, sacroiliitis, and sciatica had ceased without residuals; and (2) whether appellant has established that his claim should be expanded to include a degenerative condition of the left hip.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on September 17, 2012 appellant, then a 51-year-old police officer, sustained a right-sided lumbar sprain, displacement of a lumbar intervertebral disc without myelopathy, sacroiliitis, lumbar radiculitis, and sciatica sustained while running and climbing during physical training. He stopped work that day and did not return. Appellant received wage-loss compensation benefits from November 28, 2012 to February 8, 2014.

Appellant submitted medical evidence regarding his history of left-sided lumbar sciatica. In an August 29, 2012 report, Dr. Gordon V. Dalton, an attending Board-certified orthopedic surgeon, noted a history of sciatica into the left lower extremity, treated with steroid injections, and a history of left shoulder impingement. He injected appellant's left shoulder and prescribed medication.

Appellant sought treatment at a hospital emergency room on October 3, 2012. Lumbar x-rays obtained that day were within normal limits. Amy Ishak, a nurse practitioner, prescribed medication and noted work restrictions.

In an October 8, 2012 report, Dr. Andrew B. Dahlgren, an attending physician Board-certified in family practice and sports medicine, related appellant's account of the onset of severe lumbar pain with right-sided sciatica after jogging, running, and crawling at work. He noted that appellant walked "with an antalgic gait favoring the right lower extremity." Dr. Dahlgren diagnosed sciatica and mechanical low back pain. He ordered an October 12, 2012 lumbar magnetic resonance imaging (MRI) scan, which demonstrated a "[m]oderate to large right posterolateral disc extrusion at L5-S1" with displacement of the right S1 nerve root. In an October 15, 2012 report, Dr. Dahlgren noted continuing right-sided lumbar radiculopathy radiating into the right foot.

In an October 17, 2012 report, Dr. Benjamin G. Seeman, an attending osteopath Board-certified in physiatry, related appellant's account of the onset of severe lumbar pain radiating into the right lower extremity "while doing physical training at work." He diagnosed a "moderate to large disc extrusion" causing significant functional limitations, lumbosacral radiculitis, and sacroiliitis. Dr. Seeman prescribed lumbar injections and physical therapy.

On October 23, 2012 Dr. Seeman related appellant's account of having to sleep on his left side due to right-sided radicular pain. On an October 30, 2012 examination he found normal strength and range of motion in both hips and a positive right straight leg raising test. As of November 13, 2012, Dr. Seeman observed that appellant ambulated with an antalgic gait. He prescribed a back brace and referred appellant to Dr. John York, an osteopathic physician Board-certified in orthopedic surgery.

Dr. York first treated appellant on November 19, 2012 and provided a history of the accepted occupational injury. He diagnosed a displaced lumbar disc without myelopathy, sciatica, and low back pain. Dr. York performed a right-sided L5-S1 microdiscectomy on December 8, 2012, approved by OWCP.[2]

[2] Appellant received medical management nurse services from January through April 2013. On January 8 and April 30, 2013 the nurse observed that appellant ambulated with a limp.

In a January 9, 2013 report, Dr. Seeman opined that appellant's lumbar symptoms had improved with surgery. He prescribed medication and physical therapy.[3] Dr. Seeman submitted periodic reports from March 13 to July 25, 2013 diagnosing continued right-sided lumbar radiculopathy with emerging symptoms of left-sided lumbar radiculopathy. He administered a series of bilateral L4 nerve root injections.

Dr. York also submitted periodic reports through July 24, 2013 noting continued right-sided sciatica, right-sided piriformitis, right hip and groin pain, an L4-5 annular tear,[4] and piriformitis. He opined that these conditions remained related to the accepted injury. Dr. York held appellant off work.

In a September 5, 2013 report, Dr. York noted tenderness of the left pubic tubercule, left hip adductor muscles, left groin, limited internal and external rotation of the left hip, left hamstring tightness, and a positive left Patrick-Fabere test. He diagnosed pain in the left hip joint, articular cartilage disorder of the left hip, chronic pain syndrome, postlaminectomy syndrome, lumbago, sciatica, and a lumbar sprain. Dr. York recommended left hip arthroscopy to debride torn cartilage and repair a labral tear.[5]

In a September 10, 2013 report, Dr. York noted that appellant ambulated with an antalgic gait, favoring the right hip. On examination, he found tenderness in the lesser trochanter of the left hip and groin, tenderness of the left hip adductors, limited external rotation, pain with external rotation, pain on passive internal, and external rotation of left hip. Dr. York diagnosed hip joint pain, chronic pain syndrome, postlaminectomy syndrome, and sciatica. He opined that an antalgic gait following the accepted injury aggravated or caused the left hip condition.

On September 10, 2013 Dr. York performed a left hip arthroscopy with debridement chondroplasty and debridement of a labral tear. He opined that appellant's hip pain was "due to work-related accident in which he hurt his back initially, but also had some hip pain at that time and during the course of rehabilitation on his back, his hip became more symptomatic with significant left groin pain, difficulty ambulating. Diagnostic studies including … MRI [scan] and arthrogram showed a labral tear and some impingement."

In a September 10, 2013 letter, OWCP noted that it could not approve Dr. York's surgical request as it had not accepted a left hip condition. It requested that appellant submit a narrative report from his attending physicians within 30 days, indicating whether the left hip condition was related to the accepted lumbar injuries.

In an October 13, 2013 report, Dr. York observed catching, popping, clicking, and grinding of the left hip. He obtained x-rays on October 31, 2013 showing "dystrophic soft tissue calcifications lateral to the left femoral head," new since August 13, 2013 studies.

[3] Appellant participated in physical therapy in January and February 2013.

[4] A May 29, 2013 MRI scan revealed an annular tear at L4-5.

[5] An August 13, 2013 left hip MRI scan showed mild degenerative joint disease, with "full thickness cartilage loss anterior superior acetabulum with subchondral degenerative change and likely some degree of delamination with degenerative tearing of the anterior superior acetabular labrum."

On November 7, 2013 OWCP obtained a second opinion from Dr. Emily Hoff-Sullivan, a Board-certified orthopedic surgeon, who summarized the medical record and reviewed a statement of accepted facts provided by OWCP. Dr. Hoff-Sullivan related appellant's account of left hip pain as his primary problem, with occasional twinges of lumbar pain. Appellant recalled right ankle and right knee injuries, and a possible lumbar injury, sustained while working as an airport police officer. Dr. Hoff-Sullivan noted his history of left-sided sciatica prior to the accepted injury. She listed surgical procedures of "[r]ight ankle surgery, appendectomy, bilateral inguinal hernia repair," lumbar microdiscectomy, and left hip arthroscopy. On examination, Dr. Hoff-Sullivan found restricted lumbar motion, and decreased motor strength in the left leg secondary to hip pain. She diagnosed "[d]isplacement of lumbar intervertebral disc status post L5-S1 microdis[c]ectomy." Dr. Hoff-Sullivan opined that appellant had "preexisting degenerative disc disease and a past history of left-sided symptoms. However, during the course of his employment, appellant sustained an extrusion of the disc affecting the right lower extremity." Dr. Hoff-Sullivan opined that his prognosis for the lumbar spine was good as his symptoms improved greatly after surgery. She opined that "[w]ithin a reasonable degree of medical certainty … total disability ceased six weeks following [appellant's] surgery performed on December 6, 2012." Dr. Hoff-Sullivan then noted his physical limitations "resulting from the work-related disability" included no heavy lifting over 40 pounds "and no walking or standing for more than two hours at a time." She stated that appellant had "severe left hip pain that compromises [appellant's] ambulation and tolerance, however, this is a condition not related to the work-related injury." Dr. Hoff-Sullivan added that there was "no documented evidence of nonindustrial or preexisting disability except for the left hip condition that has progressed since the injury."

By notice dated January 10, 2014, OWCP advised appellant of its preliminary determination to terminate his wage-loss and medical benefits as the accepted injuries had ceased without residuals, based on Dr. Hoff-Sullivan's opinion. It afforded appellant 30 days to submit additional evidence and argument.

In response, appellant submitted copies of medical evidence previously of record, new claims for compensation (Form CA-7), and copies of medical literature regarding piriformis syndrome and tendinitis. He also provided a January 25, 2014 report from Dr. York, who explained that, following the December 6, 2012 right-sided L5-S1 microdiscectomy, appellant "had a prolonged rehabilitation and began having left hip pain during his recovery. [Dr. York felt] that the cause of [appellant's] hip pain was due to the favoring and weakness of the right lower extremity from the herniated disc." Dr. York noted that an MRI scan and arthrogram of the left hip revealed full-thickness cartilage loss of the anterior superior acetabulum, subchondral degenerative change, and likely delamination with degenerative tearing of the anterior superior acetabular labrum. He opined that "causality of this is directly related to the back injury. [Appellant] was favoring his right lower extremity after the herniated disc caused weakness in the right lower extremity. This caused him to place more weight on his left hip caus[ing] a labral tear and superior acetabular cartilage defect (Delamination)." On September 10, 2013 Dr. York performed left hip arthroscopy including a "superior labral debridement because the labrum was basically shredded and irreparable. He continues to have significant disability secondary to left hip pain." Dr. York recommended a left hip resurfacing to allow him to recover fully and return to work.

By decision dated March 19, 2014, OWCP terminated appellant's wage-loss and medical compensation benefits effective March 10, 2014 as the accepted injuries had ceased without residuals. It accorded the weight of the medical evidence to Dr. Hoff-Sullivan.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[6] Having determined that, an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[7] Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[8]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[9] To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.[10]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a right-sided lumbar sprain, displaced lumbar disc, sacroiliitis, lumbar radiculitis, and sciatica, necessitating a right-sided L5-S1 microdiscectomy. It terminated his wage-loss and medical compensation benefits effective March 10, 2014, on the grounds that the accepted conditions ceased without residuals. OWCP based its termination on the opinion of Dr. Hoff-Sullivan, a Board-certified orthopedic surgeon and second opinion physician.

The Board finds, however, that Dr. Hoff-Sullivan is insufficient to meet OWCP's burden of proof to establish that the accepted lumbar injury had ceased without residuals. In her November 7, 2013 report, Dr. Hoff-Sullivan was inconsistent when she explained that, although total disability ceased six weeks after the December 6, 2012 microdiscectomy, appellant continued to require work restrictions "resulting from the work-related disability." These limitations included no lifting over 40 pounds "and no walking or standing for more than two hours at a time." Dr. Hoff-Sullivan's restrictions do not establish that her work-related conditions had resolved. On the contrary, she found appellant partially disabled for work due to the accepted lumbar injury. Under these circumstances, Dr. Hoff-Sullivan's opinion is insufficient to meet OWCP's burden of proof to terminate his wage-loss and medical compensation benefits.[11] OWCP's March 19, 2014 decision is reversed.

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[6] *Bernadine P. Taylor*, 54 ECAB 342 (2003).

[7] *Id*.

[8] *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

[9] *See T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

[10] *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

[11] *J.M.*, *supra* note 8.

LEGAL PRECEDENT -- ISSUE 2

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[12] To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[13] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[14]

ANALYSIS -- ISSUE 2

The Board finds this case is not in posture for decision with regard to the issue of whether appellant's claim should be expanded to include a degenerative left hip condition. OWCP noted in a September 10, 2013 letter that it had not yet accepted the left hip condition observed by several of his physicians. The March 19, 2014 termination decision did not adjudicate the issue.

OWCP issued the September 10, 2013 development letter because several of appellant's physicians indicated that he sustained a consequential left hip condition. Dr. Dahlgren, an attending Board-certified family practitioner, and Dr. Seeman, an attending osteopathic physician Board-certified in physiatry, both observed appellant's antalgic gait favoring his right leg. Dr. York, an attending osteopathic physician Board-certified in orthopedic surgery, opined that placing increased weight on the left hip due to right leg weakness caused a left labral tear and superior acetabular cartilage defect. He performed arthroscopy of the left hip with chondroplasty and debridement on September 10, 2013. The Board finds that Dr. York's opinion, while not sufficiently rationalized to establish causal relationship, is of sufficient probative quality to require additional development.[15]

The Board notes that, while Dr. Hoff-Sullivan opined that appellant's left hip condition was not related to the accepted lumbar injury, OWCP did not ask her specific questions

[12] *V.B.*, Docket No. 12-599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[13] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[14] *V.B., supra* note 12; *James Mack*, 43 ECAB 321 (1991).

[15] *John J. Carlone*, 41 ECAB 354 (1989).

regarding this issue. Also, Dr. Hoff-Sullivan did not provide medical reasoning supporting her conclusion.[16] Her opinion is therefore of insufficient weight to create a conflict with Dr. York.[17]

OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[18] The case will be remanded to OWCP for further development of the medical evidence and a reasoned opinion regarding whether appellant sustained a consequential left hip condition. Following this and such other development deemed necessary, OWCP shall issue a final decision on the issue.

On appeal, appellant contends that he established a consequential left hip condition as his physicians provided sufficient medical rationale to establish causal relationship. He notes that his 20-year career as a police officer, as well as his work at the employing establishment, required arduous physical activity which could not have been performed with a degenerated left hip. As stated above, the case will be remanded for additional development regarding whether appellant sustained a consequential left hip condition.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss and medical compensation benefits. The Board further finds that the case is not in posture for a decision regarding whether he sustained a consequential left hip condition. The case will be remanded to OWCP for additional development on this issue.

[16] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[17] Section 8123(a) of FECA provides that, when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict. 5 U.S.C. § 8123(a). When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence. *Delphia Y. Jackson*, 55 ECAB 373 (2004).

[18] *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2014 decision of the Office of Workers' Compensation Programs is reversed as to termination and remanded for further development as to expansion of the claim, in accordance with this opinion.

Issued: May 26, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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