

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEYSHA R. McCLOUD and U.S. POSTAL SERVICE,
SOUTH POST OAK STATION, Houston, TX

*Docket No. 03-1289; Submitted on the Record;
Issued August 14, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained a left hip condition on January 6, 1998.

Appellant, a 28-year-old letter carrier, filed a notice of traumatic injury on January 7, 1998 alleging that she injured her lower back, left shoulder and neck when she slipped in the performance of duty on January 6, 1998. The Office of Workers' Compensation Programs accepted her claim for cervical and lumbar strains on March 18, 1998.

Appellant filed a second claim on February 8, 1999 alleging that on January 6, 1999 she reinjured her back and hip while running from a dog in the performance of duty. In a letter dated April 20, 1999, she stated that she had not sustained a new injury, but that the incident on January 6, 1999 was as a result of her ongoing left hip, left side of her back and buttock pain. She stated that she was under the continuing care of her physicians since her January 6, 1998 employment injury. By decision dated April 19, 2000, the Office denied appellant's request for continuing medical care of her left hip finding that this condition was not causally related to her accepted January 6, 1998 employment injury.

In a letter dated April 21, 2000, appellant requested an oral hearing. Following the oral hearing on September 26, 2000, the hearing representative issued a decision, dated November 20, 2000, denying appellant's request for continuing medical treatment.

Appellant requested reconsideration on May 29, 2001 and submitted additional medical evidence. By decision dated July 16, 2001, the Office denied her claim finding that she had not established a causal relationship between her left hip condition and her accepted employment injury. Appellant again requested reconsideration on April 23, 2002. By decision dated January 16, 2003, the Office reviewed appellant's claim on the merits and declined to modify its July 16, 2001 decision.

The Board finds that this case is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim by the weight of the able, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.² This generally can be established only by medical evidence. 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.³

Rationalized medical opinion evidence is 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. 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.⁴

Appellant has alleged that she sustained a left hip condition as a result of her January 6, 1998 employment injury. The first mention of this condition, in the record before the Board, is in a note dated March 11, 1998, on which the employing establishment reported that appellant described left side hip pain. She sought treatment from Dr. Henry J. Blum, a Board-certified orthopedic surgeon, on April 2, 1998. In his initial form report to the Office, Dr. Blum diagnosed strain and contusions along with pain and stiffness. He did not specify a part of the body. Appellant underwent a left hip magnetic resonance imaging (MRI) scan on September 25, 1998 and this test was normal. Dr. Blum submitted a June 3, 1999 report stating that appellant "still has left lateral hip pain." In this report, he did not provide a history of injury and did not attribute appellant's diagnosed condition to her accepted employment injury.

The Office undertook further development of appellant's claim and referred her for a second opinion evaluation with Dr. Larry Likover, a Board-certified orthopedist, on February 22, 2000. In a report dated March 17, 2000, he noted appellant's history of injury and performed a physical examination. Dr. Likover noted appellant's complaints of pain over the left lateral hip with gentle external rotation of the hip and no pain on internal rotation of the hip. He found that appellant had a normal gait pattern. Dr. Likover concluded that there were no objective findings substantiating her diagnosis of hip bursitis and that appellant's clinical

¹ 5 U.S.C. §§ 8101-1893.

² *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

³ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁴ *James Mack*, 43 ECAB 321 (1991).

examination was inconsistent with the diagnosis. He stated that appellant was capable of working in her date-of-injury position and that she did not require any further treatment. This report does not support appellant's claim.

Appellant submitted a report dated December 16, 1999 from Dr. Booker T. Wright, Jr., a Board-certified orthopedic surgeon, noting that appellant hurt her left hip in January 1998 at work. He reported a normal gait pattern and stride length without a limp, tenderness at the greater trochanter and normal reflexes and neurologic testing in the lower extremity. Dr. Wright diagnosed probable trochanteric bursitis, but stated that his evaluation was not complete as he did not have a prior medical history including diagnostic studies. This report is insufficient to meet appellant's burden of proof in establishing that she has a left hip condition causally related to her accepted employment injury. Dr. Wright did not base his report on a complete history of injury and did not provide a conclusive diagnosis. He noted that he required additional test results and prior medical findings prior to rendering a final decision. In a report dated January 10, 2000, Dr. Wright diagnosed trochanteric bursitis. He did not provide a history of injury and did not attribute appellant's diagnosed condition to her employment injury.

Dr. Blum completed a report on May 25, 2000 and stated that, in his first examination of appellant on April 2, 1998, he diagnosed a lumbar contusion, hip contusion, thumb sprain and cervical strain as a result of her injuries on January 6, 1998. Dr. Blum stated that appellant continued to experience greater trochanteric tenderness with full range of motion, negative straight leg raising and no radicular signs. Dr. Blum stated, "[appellant's] conditions of recurrent trochanteric bursitis indeed could be attributed to the initial fall that she sustained on January 6, 1998, due to the trauma." On January 16, 2001 he noted appellant's history of a fall on January 6, 1998 and stated that his initial examination showed tenderness in the left trochanteric region and also in the left sacroiliac region with a diagnosis of a hip contusion, lumbar contusion, thumb sprain and cervical sprain. Dr. Blum stated, "[i]t is my opinion that her claims of hip and buttock pain were documented as being caused by the fall she sustained...."

In a report dated December 18, 2001, Dr. Blum noted appellant's fall and stated that her fall caused her hip strain which was not identified initially. He stated, "[i]t is my opinion that she did indeed have a strain that could have lasted for a good 6 [to] 12 months from the time of the injury, since she had an injury to her spine, which prevented her from a normal gait." Dr. Blum concluded that, "[b]asically, she has a direct traumatic fall and that should be enough to cause the contusion in her hip...." Appellant submitted a form report, dated March 11, 2002 from Dr. Blum, diagnosing left hip bursitis unresponsive to treatment.

On March 11, 2002 Dr. Blum completed a narrative report noting that he first examined appellant on April 2, 1998 due to complaints of left side low back pain that radiated to her left trochanteric region as well as neck pain with headaches. Dr. Blum reviewed his notes regarding his initial evaluation and stated that he made note of appellant's slip, fall and subsequent landing on her buttocks which resulted in pain developing in the right trochanteric region. He initially diagnosed a hip contusion, lumbar contusion, thumb sprain and cervical strain. Dr. Blum stated, on April 30, 1998, that appellant continued to experience left hip pain with no limp. Appellant returned to work and increased her work load through June 25, 1998, at which time, she planned to return to full duty within two weeks. On August 6, 1998 appellant complained of a return of her left lateral hip pain and Dr. Blum diagnosed trochanteric bursitis. On September 21, 1998

Dr. Blum observed that appellant walked with a limp. He diagnosed chronic left trochanteric bursitis due to appellant's repetitive abnormal gait pattern following the injury she sustained on January 6, 1998. He stated:

“The reason I have come to this diagnosis, which I consider at this point to be permanent, is [the] fact that [appellant][,] at the time of the injury[,], landed on her buttock causing her to develop a contusion to her left hip, as well as the strain of the lumbar spine and cervical strain and thumb strain. All of the other complaints have resolved. However, [appellant] developed an abnormal gait pattern. Throughout the years, she has been forced to return to carrying mail, which causes her to sway back and forth when she ambulates increasing the likelihood that the friction between the greater trochanter, the bursa and the fascia lata of the lateral hip maintain a repetitive exacerbation and flare ups of her bursitis....

“From a medical point of view, my conclusion is that if one has an inflamed bursa and continues to perform friction either by the bony prominence of the greater trochanter against the fascia lata or by walking with an abnormal gait that produces this increased friction, then the bursitis is not allowed to heal or resolve properly.... I believe that [appellant's] symptoms are permanent due to the actual job description that she is involved with.”

Dr. Bruce R. Weiner, a Board-certified orthopedic surgeon, completed a fitness-for-duty examination on December 12, 2000. He reported that appellant fell onto her buttocks on January 6, 1998 and developed pains in her back with tingling into her left leg and foot. On physical examination Dr. Weiner found no definite spasm in appellant's back, neurological testing within normal limits and straight leg raising tight on the left with slight decreased rotation on the left hip. He found that appellant's spine and left hip x-rays were normal. Dr. Weiner diagnosed a lumbar strain and left hip strain. He noted that appellant's complaints were subjective.

In this instance, appellant's attending physician, Dr. Blum, a Board-certified orthopedic surgeon, diagnosed hip contusion in his initial examination of appellant and opined that her current hip condition of chronic hip bursitis was related to her employment both as a result of her immediate traumatic injury and continuing as a consequence of her employment duties. He explained the physical processes by which he felt appellant developed this condition and concluded that appellant was partially disabled as a result of this condition. The Office second opinion physician, Dr. Likover, a Board-certified orthopedic surgeon, examined appellant and found that her physical examination did not support the diagnosis of hip bursitis and concluded that appellant could return to her date-of-injury position without restrictions.

Section 8123(a) of the Act⁵ provides, “[i]f there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.” On remand, the Office should request that Dr. Blum provide his initial treatment notes, should develop a statement of accepted facts and refer appellant with a list of specific questions to an appropriate Board-certified

⁵ 5 U.S.C. §§ 8101-8193, 8123(a).

physician to determine whether she has or had a hip condition and, if so, whether this condition is related to her employment. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

The January 16, 2003 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this decision of the Board.

Dated, Washington, DC
August 14, 2003

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member