

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

A.V., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Dallas, TX, Employer**

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**Docket No. 09-871
Issued: November 2, 2009**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 12, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 14, 2008 and January 22, 2009 merit decisions denying her claim for total disability. Pursuant to 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 met her burden of proof to establish that she sustained total disability on or after May 28, 2008 due to her March 20, 2008 employment injury.

FACTUAL HISTORY

The Office accepted that on March 20, 2008 appellant, then a 41-year-old nursing assistant, sustained a lumbar sprain when the chair she started to sit in slipped out from under her

and she landed on her knees and right hip. She returned to light-duty work with the employing establishment on March 21, 2008¹ and she received compensation for periods of disability.²

The findings of March 24, 2008 x-rays of the lumbar spine were normal, and the findings of x-rays of the pelvis from the same date showed bilateral asymmetric sacroiliitis with inflammatory processes such as psoriatic arthritis and Reiter's syndrome. A pelvic magnetic resonance imaging (MRI) scan test completed on April 7, 2008 revealed no acute osseous abnormality or joint effusion, but showed mild S1 spurring and suggested mild subchondral sclerosis at the sacroiliac joint which could reflect chronic mild sacroiliitis. A lumbar MRI scan from the same date showed normal results with no disc herniation, nerve root compression or spondylolisthesis.

In an April 15, 2008 report, Dr. Louise Lamarre, an attending Board-certified emergency physician, indicated that appellant reported that on March 20, 2008 she was sitting on a chair which flipped forward and caused her to land on both knees and then on her right hip. She indicated that she was treating appellant for lumbar, right hip, and knee pain and recommended that she not lift more than 10 pounds, walk more than 15 minutes at a time, walk more than 2 hours per day or engage in kneeling, bending, twisting, pushing or pulling. Dr. Lamarre diagnosed lumbar strain, right sacroiliitis and resolved knee contusion and opined that her condition was directly related to the March 20, 2008 fall at work. She examined appellant again on May 6, 2008 and noted that her condition was improving. Dr. Lamarre noted that appellant had some tenderness and spasms with reduced pain and advised her to continue to work within her work restrictions.

On May 29, 2008 appellant filed a claim for compensation (Form CA-7) alleging that she sustained wage loss for periods beginning May 28, 2008 due to her March 20, 2008 employment injury. On June 5, 2008 the Office requested that appellant submit additional factual and medical evidence in support of her claim for work-related disability.

In a May 27, 2008 report, Dr. Lamarre noted that appellant continued to have medical difficulties but also reported that she was being treated by a rheumatologist for fibromyalgia and ankylosing spondylosis for which she received intravenous injections to help with inflammation. She noted that this might explain why appellant was not progressing as smoothly as expected. Dr. Lamarre noted that examination showed continued tenderness and recommended she continue with her work restrictions.

In a May 28, 2008 report, Dr. Lamarre noted that appellant reported that she was forced to perform work beyond her restrictions. She noted increased spasms and stiffness in the lumbar region and more restricted back motion and stated that due to this increased symptomatology she was taking appellant off work and increasing her medication. Dr. Lamarre noted that appellant's medication was a long-acting pain reliever which might cause drowsiness so it would not be safe

¹ The modified job involved taking vital signs, setting up intravenous drips and distributing ice water. It did not require lifting more than 10 pounds, walking more than 15 minutes at a time, walking more than 2 hours per day or engage in kneeling, bending, twisting, pushing or pulling.

² Appellant received continuation of pay for April 23, 24 and 28, 2008.

for her to work, especially working directly with patients. She advised appellant not to work until she was rechecked on June 24, 2008.

On July 8, 2008 Dr. Bobby J. Meador, a Board-certified rheumatologist, noted that appellant had severe pain related to spondyloarthropathy and fibromyalgia. He opined that she could not work because of the severe pain but did not discuss the work incident of March 20, 2008 or report any findings on examination.³

In a July 14, 2008 decision, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained total disability on or after May 28, 2008 due to her March 20, 2008 employment injury.

On July 22, 2008 Dr. Lamarre stated that appellant hurt herself at work on March 20, 2008 when she fell forward and injured her sacroiliac area and knees. She indicated that appellant disclosed a past history of fibromyalgia, sacroiliitis and ankylosing spondylitis and stated, "The injury that the patient sustained on [March 30, 2008] has created severe aggravations of preexisting injury, which are fibromyalgia and ankylosing spondylitis." Dr. Lamarre stated that this diagnosis was supported by an April 7, 2008 MRI scan of the pelvis which showed sclerosis at the sacroiliac joint reflecting mild sacroiliitis, possibly of a chronic nature. She posited that the inflammation to appellant's pelvic area at the sacroiliac joint caused her such discomfort that she had no choice but to take her off work on May 28, 2008 and stated, "In all probability, the injury that the patient sustained on [March 30, 2008] has caused the aggravation of the preexisting spondylosis of her spine and sacroiliitis and also the patient has sustained a lumbar strain in the process, which is confounded by the preexisting injury of fibromyalgia." Dr. Lamarre found no change in appellant's examination findings and expanded the diagnosed conditions beyond lumbar strain to include bilateral sacroiliitis and aggravation of preexisting fibromyalgia and ankylosing spondylitis. She continued to support that appellant was totally disabled as a result of her conditions.

On August 13, 2008 Dr. Lamarre released appellant to return to work part time with restrictions. She stated that appellant sustained a lumbar strain on March 20, 2008 as a result of the work injury but also had a history of spondylolisthesis and fibromyalgia for which she was being treated by a rheumatologist. Dr. Lamarre noted:

"The lumbar strain by this time is probably healed but the condition that she has of spondylolisthesis and fibromyalgia is strongly overshadowing the lumbar injury that she sustained at work. It has been extremely challenging to separate the two. For that reason, the patient was kept off work from May 28, 2008 until June 24, 2008."

Appellant requested a telephone hearing with an Office hearing representative. At the November 3, 2008 hearing, she acknowledged that she had been receiving treatment for fibromyalgia, sacroiliitis and ankylosing spondylitis prior to the March 20, 2008 work incident but asserted that the fall at work aggravated these conditions. Appellant indicated that during the

³ On March 24, 2008 Dr. Meador had recommended that appellant not lift more than 10 pounds and avoid bending, stooping, pushing and pulling.

three to six months prior to March 20, 2008 incident she had been receiving treatment from Dr. Meador, a rheumatologist. She stated that prior to March 20, 2008 she missed two to three days a week due to her fibromyalgia, sacroiliitis and ankylosing spondylitis. Appellant indicated that initially after March 20, 2008 she had restrictions on bending, stooping, pulling and pushing, but did not have restrictions on walking. On April 15, 2008 her physician advised her not to walk more than 15 minutes at a time or 2 hours intermittently throughout the day. Appellant claimed that she was required to walk 20 to 30 minutes at a time without sitting and variously indicated that she was required to stand either 1 hour at a time or 2 to 3 hours at a time without sitting.

Appellant submitted a November 18, 2008 report in which Dr. Christopher Mann, an attending osteopath, advised that he had treated her since April 15, 2008 for bilateral sacroiliitis with significant lower extremity radiculopathy. Dr. Mann noted that appellant had an accident on March 20, 2008 when a chair in which she was sitting suddenly flipped over and she landed on her knees and right hip causing significant pain in her lumbar and right pelvic region. He noted that appellant indicated that this fall caused significant exacerbation of her low back condition with increased extremity paresthesias and related spasticity across her lower back. Dr. Mann advised that Dr. Lamarre referred appellant for additional evaluation and she was noted to have significant inflammation of the sacroiliac joint which was suggestive of significant arthritis or Reiter's syndrome which would have caused significant chronic recurrent pain in the sacroiliac and low back area. He stated that appellant had only been able to return to work on a part-time basis with restrictions and stated:

“The patient requires continued pain medications and regular stretching and range of motion program in order to maintain what basic function she has in her low back at this time. Therefore, it is medically necessary that the patient continue to work at only a four-hour work shift so as to allow therapeutic rest and nonweight bearing time of the day so as to decrease inflammation in the low back and sacroiliac joints.”⁴

In a January 22, 2009 decision, the Office hearing representative affirmed the Office's July 14, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, 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 and/or specific condition for which

⁴ Appellant submitted treatment forms dated November 13 and 15 and December 2, 2008 which contained a diagnosis of aggravation of sacroiliitis. The forms provided that appellant could work on a part-time basis with restrictions.

⁵ 5 U.S.C. §§ 8101-8193.

compensation is claimed are causally related to the employment injury.⁶ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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 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.⁷

ANALYSIS

The Office accepted that on March 20, 2008 appellant, then a 41-year-old nursing assistant, sustained a lumbar strain when the chair she started to sit in slipped out from under her and she landed on her knees and right hip. She returned to light-duty work with the employing establishment on March 21, 2008.⁸ On May 29, 2008 appellant filed a Form CA-7 alleging that she sustained wage loss for periods beginning May 28, 2008 due to her March 20, 2008 employment injury.

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained total disability on or after May 28, 2008 due to her March 20, 2008 employment injury.

Appellant submitted several reports, dated beginning May 28, 2008, in which Dr. Lamarre, an attending Board-certified emergency physician, indicated that she was totally disabled starting May 28, 2008 due to her continuing back problems. Dr. Lamarre indicated that this work stoppage was justified because appellant exhibited worsening symptoms, including an increase in lumbar spasms and stiffness and greater restriction of back motion.

Dr. Lamarre later posited that appellant's disability starting July 22, 2008 could be explained by her belief that she sustained a more serious injury on March 20, 2008 than had been accepted by the Office. In a July 22, 2008 report, she indicated that appellant disclosed a past history of fibromyalgia, sacroiliitis and ankylosing spondylitis and stated, "In all probability, the injury that the patient sustained on [March 30, 2008] has caused the aggravation of the preexisting spondylosis of her spine and sacroiliitis and also the patient has sustained a lumbar strain in the process, which is confounded by the preexisting injury of fibromyalgia." Dr. Lamarre asserted that this diagnosis was supported by an April 7, 2008 MRI scan of the pelvis which showed sclerosis at the sacroiliac joint reflecting mild sacroiliitis, possibly of a chronic nature. She posited that the inflammation to appellant's pelvic area at the sacroiliac joint caused her such discomfort that she had no choice but take her off work on May 28, 2008.

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

⁸ The modified job involved taking vital signs, setting up intravenous drips and distributing ice water. It did not require lifting more than 10 pounds, walking more than 15 minutes at a time, walking more than 2 hours per day or engage in kneeling, bending, twisting, pushing or pulling.

Dr. Lamarre's reports, however, are of limited probative value on the relevant issue of the present case in that she did not provide adequate medical rationale in support of her conclusion that appellant's total disability on and after May 28, 2008 was related to the March 20, 2008 employment injury.⁹ The Office has only accepted that appellant sustained a lumbar sprain on March 20, 2008 and Dr. Lamarre has not adequately explained how appellant could have sustained an aggravation of her preexisting fibromyalgia, sacroiliitis and ankylosing spondylosis on that date, nor did she explain how the effects of the March 20, 2008 employment injury could have caused total disability on and after May 28, 2008.

Dr. Lamarre did not describe the course and treatment of appellant's back conditions prior to March 20, 2008 in any detail.¹⁰ She did not explain the medical process through which the March 20, 2008 employment incident would have aggravated appellant's preexisting fibromyalgia, sacroiliitis and ankylosing spondylosis. These conditions had caused periodic total disability prior to March 20, 2008 and Dr. Lamarre did not explain why appellant's disability on and after May 28, 2008 was not due to the natural progression of the underlying fibromyalgia, sacroiliitis and ankylosing spondylosis. She argued that April 7, 2008 diagnostic testing supported her opinion on causal relationship but she did not compare diagnostic testing taken before and after March 20, 2008. Dr. Lamarre asserted that appellant's increased symptoms after May 28, 2008 supported a finding of work-related total disability, but she did not discuss physical examination findings in any detail or explain why such findings were related to the March 20, 2008 employment injury.¹¹

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained total disability on or after May 28, 2008 due to her March 20, 2008 employment injury.

⁹ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹⁰ Appellant had been treated by Dr. Meador, a rheumatologist, for three to six months prior to March 20, 2008 and she testified that fibromyalgia, sacroiliitis and ankylosing spondylosis kept her off work for two or three days per week prior to March 20, 2008

¹¹ The record contains a November 18, 2008 report in which Dr. Mann, an attending osteopath, discussed appellant's back condition at that time. However, Dr. Mann did not provide a clear opinion that he felt appellant sustained total disability on or after May 28, 2008 due to her March 20, 2008 employment injury. Appellant reported that she was forced to perform work beyond her restrictions, but she did not submit evidence to support this assertion.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' January 22, 2009 and July 14, 2008 decisions are affirmed.

Issued: November 2, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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