

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

C.F., Appellant)

and)

DEPARTMENT OF THE ARMY, U.S. ARMY)
CORPS OF ENGINEERS, Vicksburg, MS,)
Employer)

**Docket No. 09-819
Issued: January 4, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 5, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated April 7 and November 10, 2008 denying her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant has established that she sustained a recurrence of disability following her retirement on June 23, 2006 causally related to her accepted March 22, 1989 employment injury.

FACTUAL HISTORY

On March 23, 1989 appellant, then a 40-year-old secretary, filed a traumatic injury claim alleging that on March 22, 1989 she broke her left hip when she slipped and fell on wet bricks in the parking lot. The Office accepted the claim for left femur fracture and enthesopathy of the hip

region and also accepted her January 16, 1993 and May 6, 2002 recurrence claims.¹ On June 15, 2002 the employing establishment offered appellant the light-duty position of computer specialist, which she accepted on July 15, 2002.

On January 6, 2006 appellant filed a notice of recurrence (Form CA-2a) requesting that the Office reopen her claim for medical benefits only, which the Office accepted. Appellant retired from the employing establishment effective June 23, 2006.

On June 26, 2006 Dr. Guy T. Vise, an attending Board-certified orthopedic surgeon, noted appellant's employment injury and medical histories. A review of an x-ray interpretation showed some very early left hip degenerative changes and some heterotopic bone formation around the greater trochanter. Dr. Vise diagnosed left hip fracture with symptomatic hardware and heterotopic calcification. He then provided an impairment rating for her left lower extremity of 37.5 percent.

On November 14, 2006 Dr. Vise reported that appellant had bilateral knee osteoarthritis, lumbar spine osteoarthritis, right hip osteoarthritis, cervical root compression at C6 and C7, morbid obesity and bilateral carpal tunnel syndrome. As a result of these conditions, he stated that appellant had "incredibly poor mobility" and would benefit from having a mobility scooter.

On March 21, 2007 Dr. Vise discussed appellant's bad hip and bilateral knee conditions. An examination of the left hip revealed moderate pain with severe pain on testing. Dr. Vise attributed appellant's problems to her bilateral knee condition and opined they were outside her accepted employment injury.

On August 23, 2007 the Office received appellant's claim for wage-loss compensation (Form CA-7) for the period September 1, 2007 through December 31, 2010.²

On March 31, 2008 Dr. Bryon Thomas Jeffcoat, a second opinion Board-certified orthopedic surgeon, diagnosed bilateral marked degenerative knee arthritis and postoperative removal of cannulated screws for a left hip femoral neck fracture. A review of a left hip x-ray interpretation "looks normal as far as the joint space" with some "small piece of heterotopic calcification over the greater trochanter. Dr. Jeffcoat opined that any disability appellant has from working is due to her knee condition and not her hip. In support of this conclusion, Dr. Jeffcoat stated that the left hip femoral neck fracture had healed, the left hip looked identical to the right hip and there was "minimal, if any, evidence of degenerative changes." In concluding, he opined that appellant's retirement on June 23, 2006 was not due to her accepted hip condition, but due to her nonwork-related bilateral knee condition.

By decision dated April 7, 2008, the Office denied appellant's claim for recurrence of disability commencing on or about September 1, 2007. It found that there was no medical

¹ On October 22, 1999 the Office issued a schedule award for a 37 percent impairment of the left lower extremity. On September 19, 2006 it issued appellant a schedule award for an additional two percent impairment of her left lower extremity. By decision dated January 17, 2007, the Office vacated the September 19, 2006 schedule award decision and issued an award for an additional five percent impairment of the left leg on January 26, 2007.

² Appellant noted the date on the form as "August 20, 2006."

evidence establishing a change in appellant's employment-related condition or that she stopped work due to a change in the nature and extent of her light-duty job requirements.

In a letter dated April 11, 2008, appellant noted her disagreement with the Office's April 7, 2008 decision. She noted that she worked four hours per day five days a week from July 15, 2002, the date she accepted the modified job position, until she retired on June 23, 2006. Appellant also requested an oral hearing before an Office hearing representative which was held on September 2, 2008. During the telephonic oral hearing appellant testified that her modified job changed in September 2002. She testified that when she accepted the position in July 2002 she was only required to work four hours per day five days a week which was changed to eight hours per day five days a week. According to appellant working full time in the modified job worsened her condition.

With her request for reconsideration, appellant submitted medical and factual evidence in support of her request including a June 21, 2006 letter from the Office of Personnel Management (OPM) approving her disability retirement and medical evidence from 2005 to 2006. In the June 21, 2006 letter, OPM informed her that it found she was disabled from performing her modified job due to left hip degeneration of the femoral neck, lumbar degenerative disc disease and bilateral knee severe degeneration.

Following the telephonic hearing appellant submitted an August 22, 2008 report from Dr. George E. Abraham, II, a treating Board-certified family practitioner and geriatric medicine specialist, and a January 6, 2006 left hip x-ray interpretation, which showed no evidence of a hip fracture and heterotopic bone formation at the left femoral neck. Dr. Abraham diagnosed L2-L3, L5-S1 disc desiccation, L2-L3 and L5-S1 posterior disc protrusions, L2-L3 bilateral neural foraminal and central canal stenosis, left hip femoral neck degeneration with heterotopic bone formation with moderate osteoarthritis, severe bilateral knee degeneration, bilateral lower extremity moderate polyneuropathy affecting both sensor and motor nerve fibers due to diabetes mellitus, hypertension, asthma, metabolic syndrome, morbid obesity, dyslipidemia, sleep apnea and bilateral carpal tunnel syndrome. He attributed appellant's disability to work due to her bilateral carpal tunnel syndrome and her disc bulges and degeneration. According to Dr. Abraham, appellant's "other conditions have resulted in numerous hospital stays and also affect her concentration at work." Thus, he concluded that appellant "met disability guidelines for both her job and the Social Security Administration."

By decision dated November 10, 2008, the hearing representative affirmed the Office's April 7, 2008 decision, finding that appellant had not met her burden of proof in establishing a recurrence of disability.³

³ The Board notes that, following the November 10, 2008 hearing representative's decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. *See* 20 C.F.R. § 501.2(c); *J.T.*, 59 ECAB ____ (Docket No. 07-1898, issued January 7, 2008); *G.G.*, 58 ECAB ____ (Docket No. 06-1564, issued February 27, 2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴ This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁵

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which he claims compensation is causally related to the accepted employment injury.⁶ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.⁷ 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 related to the employment injury.⁸ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁹

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.¹⁰ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.¹¹ 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.¹²

⁴ 20 C.F.R. § 10.5(x).

⁵ *Id.* See *J.F.*, 58 ECAB ____ (Docket No. 06-186, issued October 17, 2006).

⁶ *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

⁷ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁸ *S.S.*, 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008); *Ricky S. Storms*, 52 ECAB 349 (2001); see also 20 C.F.R. § 10.104(a)-(b).

⁹ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

¹⁰ See *Ricky S. Storms*, *supra* note 8; see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

¹¹ For the importance of bridging information in establishing a claim for a recurrence of disability, see *Richard McBride*, 37 ECAB 748 at 753 (1986).

¹² See *Ricky S. Storms*, *supra* note 8; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

ANALYSIS

On January 6, 2006 appellant filed a claim for a recurrence of disability for medical treatment only beginning December 10, 2005. On August 23, 2007 the Office received her claim for wage loss for the period September 1, 2007 through December 31, 2010. The record shows that appellant stopped work on June 23, 2006 and OPM approved her claim for disability retirement. The Office considered the matter as a claim for a recurrence of disability on and after June 23, 2006.¹³ However, appellant did not submit sufficient reasoned medical evidence establishing that her claimed disability was due to her March 22, 1989 left femur fracture and enthesopathy of the hip region. The Board also notes that there is no evidence showing a change in the nature and extent of the light-duty job requirements.¹⁴ There is no evidence that appropriate light-duty work was not made available.

The record relevant to her disability claim includes reports from Drs. Abraham, Jeffcoat and Vise. None of the medical evidence establishes that appellant's disability beginning June 23, 2006 was due to her accepted hip injury. Dr. Vise, who treated appellant at the time of her disability retirement, attributed her disability from working to her bilateral knee condition. Dr. Jeffcoat, an Office referral physician, diagnosed bilateral marked degenerative knee arthritis and postoperative removal of cannulated screws for a left hip femoral neck fracture. He concluded that any disability preventing appellant from working is due to her bilateral knee condition and not her hip. Thus the reports of Drs. Jeffcoat and Vise are insufficient to meet appellant's burden as neither physician attributes her disability to her accepted employment injury.

Appellant submitted an August 22, 2008 report from Dr. Abraham, to support her recurrence of disability. Dr. Abraham diagnosed L2-3, L5-S1 disc desiccation, L2-3 and L5-S1 posterior disc protrusions, L2-3 bilateral neural foraminal and central canal stenosis, left hip femoral neck degeneration with heterotopic bone formation with moderate osteoarthritis, severe bilateral knee degeneration, bilateral lower extremity moderate polyneuropathy affecting both sensor and motor nerve fibers due to diabetes mellitus, hypertension, asthma, metabolic syndrome, morbid obesity, dyslipidemia, sleep apnea and bilateral carpal tunnel syndrome. He provided no rationale as the cause of appellant's disability beyond noting it was due to her bilateral carpal tunnel syndrome, disc bulges and degeneration and noted that her other conditions caused multiple hospital stays and affected her work concentration. The Board has

¹³ Although appellant did not specifically file a claim for a recurrence of disability (Form CA-2a) for wage-loss compensation beginning June 23, 2006, Office regulations defining a recurrence of disability are applicable to this situation and the Office properly treated it as such. *See* 20 C.F.R. § 10.5(x).

¹⁴ When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements. *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

held that an opinion not fortified by rationale is of diminished probative value.¹⁵ Thus, Dr. Abraham's opinion is insufficient to establish that appellant sustained a recurrence of disability commencing after June 23, 2006 due to her accepted March 22, 1989 employment injury.

Appellant also submitted a January 6, 2006 left hip x-ray interpretation, which showed no evidence of a hip fracture and heterotopic bone formation at the left femoral neck in support of her claim. Reports of diagnostic testing submitted by her do not offer any opinion on causal relationship between her medical condition and her reported recurrence and, thus, are of no probative value.¹⁶

On appeal, appellant contends that the Office erred in rejecting her recurrence claim. She also contends that at the time of her retirement, her modified job was not the same as the one she accepted on July 15, 2002. As noted above, the record contains no evidence that appellant's modified job changed in September 2002 to requiring her to work full time instead of part time. Moreover, she worked in the modified job until her retirement in June 2006. Next, appellant contends that OPMs approval of her disability retirement establishes that her disability is due to her accepted hip condition. She asserted that the OPM found her totally disabled from performing her modified job based on her left hip femoral neck degeneration with heterotopic bone formation. The Board has held that the determinations of other administrative agencies regarding disability are not relevant under the Federal Employees' Compensation Act as different criteria are used and the relationship to factors of federal employment is often not at issue.¹⁷

As appellant failed to submit the necessary factual and rationalized medical evidence to establish that her claimed recurrence of disability is causally related to the accepted employment injury, the Office properly denied her claim for compensation.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establishing a recurrence of disability on June 23, 2006.

¹⁵ S.S., 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008) (medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof).

¹⁶ K.W., 59 ECAB ____ (Docket No. 07-1669, issued December 13, 2007).

¹⁷ See D.I., 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); H.S., 58 ECAB ____ (Docket No. 07-582, issued June 14, 2007).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 10 and April 7, 2008 are affirmed.

Issued: January 4, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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