

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

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**MICHELLE R. MASSEY, Appellant**

**and**

**DEPARTMENT OF THE NAVY, U.S. NAVAL  
RESEARCH, Washington, DC, Employer**

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**Docket No. 04-1176  
Issued: November 8, 2005**

*Appearances:*  
*Michelle R. Massey, pro se*  
*Thomas G. Giblin, Esq., for the Director*

Oral Argument September 21, 2005

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
WILLIE T.C. THOMAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On March 29, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated January 2, 2004 which denied her request for a hearing and an October 17, 2003 decision which denied her claim for a recurrence of disability.<sup>1</sup> 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 on appeal is whether appellant met her burden of proof to establish a recurrence of disability beginning June 24, 2003 causally related to her March 15, 2001 employment injury.

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<sup>1</sup> The Solicitor's Office filed a motion to remand and cancel oral argument, contending that appellant's hearing request was timely filed. The Solicitor recommended setting aside the January 2, 2004 decision, canceling the oral argument and remanding the case to the Office for further development. However, appellant requested that the oral argument proceed. On September 16, 2005 the Board issued an order denying the motion to remand and cancel oral argument. Docket No. 04-1176.

## **FACTUAL HISTORY**

On March 20, 2001 appellant, then a 38-year-old rigger worker, filed a traumatic injury claim alleging that on March 15, 2001 a contract worker snatched the chair out from under her as she was about to sit down.<sup>2</sup> Appellant fell to the floor and injured her left elbow and hip. She stopped work on March 16, 2001 and returned on March 16, 2001.

In March 15, 2001 treatment notes, Dr. Felipe Dimayuga, a Board-certified family practitioner, related that appellant described the circumstances surrounding her fall. She indicated that she hit her left hip, and left elbow, which caused shooting pain down to her knee cap. Dr. Dimayuga noted that appellant had complaints of trauma to her left buttock and elbow when she hit the floor trying to break the fall and that she experienced pain radiating down to the left leg. He diagnosed a contusion/sprain to the left shoulder, gluteus and elbow.

In a March 22, 2001 disability certificate, Dr. Robert S. Castrence, Board-certified in internal medicine, advised that appellant was seen for contusions and sprain to the left elbow and left hip. In a March 29, 2001 report, Dr. Castrence noted that neurological examination was normal.

In an August 29, 2002 report, Dr. Jorge Mondino, a Board-certified orthopedic surgeon, advised that appellant was seen for complaint of persistent pain in the right shoulder and related that she had a prior repair of the rotator cuff in 1998. He noted pain on abduction and a partial tear of the rotator cuff on the right as demonstrated by magnetic resonance imaging (MRI) scan. Dr. Mondino provided appellant with a cortisone injection and xylocaine and recommended therapy for heat, ultrasound and exercises.

In a progress note dated May 6, 2003, Dr. Mondino, advised that appellant seen for complaint of persistent pain on the right hip. He noted that appellant was walking and her right hip would give way on internal rotation. Dr. Mondino conducted an examination and noted that appellant was able to flex, extend, and rotate the hip internally and externally with no discomfort on abduction and flexion. He indicated that x-rays did not show any abnormality and recommended an MRI scan of the right hip. In a May 20, 2003 note, Dr. Mondino, advised that the MRI scan of the right hip did not show any gross abnormality. He stated that appellant continued to have a "sensation of pain that her leg is giving way." However, Dr. Mondino noted that straight leg raising was negative and she had pain on attempts of internal rotation. He recommended further testing for the right leg.

In a May 8, 2003 MRI scan of the right hip, Dr. Mark Monteferrante, a Board-certified diagnostic radiologist, noted essentially normal findings with the exception of mild asymmetric edema within the right quadratus femoris muscle. He opined that this might represent a traumatic injury or sprain of the muscle. Dr. Monteferrante noted no evidence of avascular necrosis or occult fracture.

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<sup>2</sup> The record reflects that appellant has several prior claims. They include a November 14, 1990 claim under No. 250372816, a May 4, 1995 claim under No. 250467288, a March 15, 2001 claim under No. 250574643 and a July 28, 1998 injury under No. 250528617.

A June 4, 2003 electromyography (EMG) and nerve conduction velocity (NCV) report, read by Dr. G. Hudson Drakes, Board-certified in physical medicine and rehabilitation, found the conduction velocities, distal latencies of the motor nerves and sensory latencies to be within normal limits. Dr. Drakes advised that the study was consistent with right obturator neuritis and right L5 radiculopathy.

In a June 10, 2003 report, Dr. Drakes noted that appellant related complaints of discomfort with range of motion of the right hip in abduction and adduction. He noted that internal rotation and external rotation produced significant groin pain with radiation down the leg. Dr. Drakes also noted tenderness in the right groin region and advised that the medial thigh was tender. He indicated that palpation inferior to the sciatic notch produced moderate discomfort with mild piriformis discomfort and no significant sacroiliac discomfort. Dr. Drakes determined that appellant had moderate lumbosacral paraspinal spasm; however, he advised that range of motion of the lumbosacral spine, was within functional limits. He determined that appellant had evidence of obturator neuritis, piriformis syndrome and L5 radiculopathy. Dr. Drakes recommended further treatment and a change in work setting.

Appellant filed a recurrence of disability claim on June 24, 2003 causally related to the March 15, 2001 employment injury.<sup>3</sup> She alleged back pains, hip pains, and problems with walking on her right leg, stiffness and numbness. Appellant stopped work on June 24 and returned on June 25, 2003. She indicated that, following the original injury, she worked light duty until March 22, 2001. The employing establishment indicated that no adjustments were made to appellant's regular duties following her original injury.

On July 8, 2003 the employing establishment controverted appellant's claim. Linda Marshall, appellant's supervisor since August 28, 2002, indicated that appellant had worked without incident from August 28, 2002 until June 4, 2003. She noted that appellant also worked outside federal employment in a part-time position for the United Parcel Service and at a local community college in a cleaning capacity.

By letter dated August 14, 2003, the Office noted that appellant had returned to light duty in March 2001 and requested that she provide additional information supporting her claim that she was incapable of working on June 24, 2003. The Office also advised her that there was no evidence of medical treatment for her accepted condition since March 29, 2001.

In a September 15, 2003 memorandum, the employing establishment advised the Office that appellant did not lose any time from the original injury until she filed her recurrence of disability claim. The employing establishment indicated that the only time lost was due to doctor's visits in 2003.

On October 21, 2003 the Office accepted the claim for left elbow strain and left hip contusion.<sup>4</sup> However, in a separate decision of the same date, the Office denied appellant's

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<sup>3</sup> The notice is signed by appellant on June 19, 2003 but indicates a recurrence of disability as of June 24, 2003. The Office used June 24, 2003 as the date of recurrence.

<sup>4</sup> The decision is dated October 17, 2003; however, the signature page is October 21, 2003.

claim for a recurrence of disability on June 24, 2003 causally related to the original injury to her left elbow and left hip. The Office noted that the medical evidence related to right sided and not left-sided conditions. Further, appellant had worked in outside employment and this was not addressed by any of her physicians. The Office determined that the medical evidence did not support a causal relationship between her current right hip condition and the accepted injury.

Appellant requested a hearing on November 18, 2003.

By decision dated January 2, 2004, the Office denied appellant's hearing request as untimely.

### **LEGAL PRECEDENT**

Section 10.5(x) of the Office's regulations provides that 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.<sup>5</sup>

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.<sup>6</sup> An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>7</sup>

### **ANALYSIS**

The Office accepted that appellant sustained a left elbow strain and left hip contusion in the performance of duty on March 15, 2001. She filed a recurrence of disability claim on June 19, 2003 alleging disability beginning June 24, 2003. By letter dated August 14, 2003, the Office advised appellant of the evidence needed to establish her claim. Appellant, however, did not submit sufficient reasoned medical evidence to establish that her present right hip condition is causally related to her accepted injury. She did not submit a medical report in which a treating physician explained why her disability beginning June 24, 2003 would be related to the accepted injury.

Appellant submitted several reports from Dr. Mondino. However, his reports are of limited probative value as he did not provide any opinion that appellant's condition was causally

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<sup>5</sup> 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB \_\_\_\_ (Docket No. 04-887, issued September 27, 2004).

<sup>6</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

<sup>7</sup> *Walter D. Morehead*, 31 ECAB 188 (1986).

related to the March 15, 2001 employment injury. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>8</sup> Appellant also submitted a May 8, 2003 MRI scan of the right hip, read by Dr. Monteferrante, and a June 4, 2003 EMG and NCV report, read by Dr. Drakes. However, these reports also did not provide any opinion regarding the cause of the reported condition.<sup>9</sup> Dr. Drake's June 10, 2003 report noted findings and recommended a change in work setting. Dr. Drake did not address how or why appellant's right hip condition or symptoms was caused or aggravated by the accepted employment injury.

Appellant did not submit any medical reports which specifically addressed whether the disabling conditions beginning June 24, 2003 were causally related to the employment injury. The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury. 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. 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.<sup>10</sup>

The record also contains numerous physical therapy reports; however, a physical therapist is not a "physician" as defined under section 8101(2), and cannot render a medical opinion.<sup>11</sup> Appellant did not submit any other evidence to support a recurrence of disability beginning June 24, 2003, causally related to the work injury of March 15, 2001. Consequently, she has not met her burden of proof in establishing her claim for a recurrence of disability.

### CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability beginning June 24, 2003 causally related to the March 15, 2001 employment injury.

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<sup>8</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>9</sup> *See id.*

<sup>10</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>11</sup> *Vickey C. Randall*, 51 ECAB 357 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 17, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: November 8, 2005  
Washington, DC

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

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board