

mail that day. She stopped work that day. The Office accepted that she sustained a left hip strain and appellant returned to limited duty on August 29, 1995. On August 2, 1999 the Office also accepted that she sustained a left lumbar strain.

Appellant came under the care of Dr. Terrence Pratt, a Board-certified physiatrist. In a report dated August 2, 2003, he noted appellant's complaints of left lower extremity pain with lumbosacral tenderness on examination. His impression was left lower extremity discomfort with a history of L4-5 radiculopathy, left and low back pain with degenerative changes. Dr. Pratt advised that she should continue her long-term restrictions limiting lifting to 20 pounds with no prolonged standing or walking and no climbing, twisting or kneeling. In an August 5, 2003 report, the physician noted complaints of left lower extremity giveaway with pain and numbness in the thigh. He found thigh tenderness without specific lumbosacral involvement on examination and his impression was left hip discomfort of undetermined etiology and a history of mild degenerative changes in the lumbosacral region. Dr. Pratt recommended a magnetic resonance imaging (MRI) scan of the left hip. In an August 25, 2003 report, he noted his review of an August 7, 2003 MRI scan with findings of what "could represent" a small paralabral cyst suggesting underlying labral pathology.¹

In a September 12, 2003 report, Dr. Larry F. Frevert, Board-certified in orthopedic surgery, noted that appellant had pain and problems with her left hip and groin since a 1995 injury. Physical examination of the left hip revealed mild tenderness over the sacroiliac joint posteriorly, good internal/external rotation with mild discomfort and point tenderness directly over the ilioinguinal ligament in the supine position. X-rays revealed the presence of a small cyst in the superior acetabular area laterally. His impression was left groin pain and bone scan was recommended. A September 29, 2003 bone scan revealed grossly normal activity within the pelvis, with the symphysis pubis region somewhat obscured by the overlying bladder. In an October 9, 2003 report, Dr. Frevert noted the bone scan findings and questioned whether appellant had a small hernia. He scheduled an evaluation with a general surgeon and continued her work restrictions of sit-down duty.

On March 17, 2004 the Office referred appellant, together with the medical record, a statement of accepted facts and a set of questions, to Dr. Don B.W. Miskew, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated April 21, 2004, Dr. Miskew noted his review of the statement of accepted facts and medical record and appellant's complaints of left hip pain. He reviewed Dr. Pratt's MRI scan findings and stated that two previous MRI scans of the left hip were reported as normal. On examination, he found full range of motion of the back with only slight discomfort in the left groin on back extension. Supine straight leg raising was normal and her hip motion was normal with no limitation when compared to the opposite hip although he reported that she complained of pain on extremes of internal and external rotation of the left hip. Dr. Miskew stated that appellant was extremely tender over the left groin into the left lower abdomen, compatible with a neuromuscular strain. He noted that pelvis and left hip x-rays revealed an acetabular cyst and lumbar spine x-rays showed significant narrowing of the L5-S1 disc space. He found no other significant abnormality. Dr. Miskew concluded that he did not believe that appellant had an orthopedic

¹ A copy of the MRI scan report is not contained in the case record.

problem, advising that her symptoms and complaints appeared to be coming from her left inguinal area and were most likely due to an inguinal hernia, stating that he did not feel this could be on the basis of chronic hip pain following three successive MRI scans and her lack of resolution over nine years. Dr. Miskew stated that it was unlikely that a strain injury could go on for so long and doubted if it preexisted her fall. He stated that from an orthopedic standpoint, she could be at full duty but should seek a surgical consultation regarding the hernia. In a work capacity evaluation dated May 19, 2004, Dr. Miskew advised that appellant could work her usual job without restrictions.

In an April 23, 2004 report, Dr. Pratt noted that a right ovarian cyst had been removed in January 2004, the bone scan findings and Dr. Frevert's diagnosis of a possible hernia. He reported appellant's continued complaint of left groin discomfort and leg stiffness with no significant low back discomfort. Findings on examination included left groin discomfort and very mild left low back tenderness. His impression was groin discomfort with chronic symptoms and he recommended surgical evaluation to rule out a hernia.

By letter dated June 25, 2004, the Office informed appellant that it proposed to terminate her compensation benefits on the grounds that she no longer had residuals of the accepted left hip strain condition. In a letter dated July 21, 2004, appellant disagreed with the proposed termination. She submitted duplicates of medical reports previously of record and a treatment note dated July 19, 2004 in which Dr. Pratt noted appellant's report that a surgical evaluation had not revealed a hernia. He reported her continued complaints of low back and thigh discomfort with examination findings of palpable tenderness involving the groin and proximal thigh on the left as well as the left lumbosacral region. Straight leg raising reproduced groin and low back symptoms. Dr. Pratt's impression was chronic involvement with groin and thigh discomfort as well as low back discomfort and he recommended that she return to Dr. Frevert. In an August 11, 2004 treatment note, Dr. Frevert advised that appellant continued to have pain with movement of the left hip and anterior muscular wall with point tenderness around the pubic ramus along the left side. He stated that the labral cyst found on MRI scan could cause the pain and stated hip arthroscopy should be considered. Dr. Frevert advised that he was still concerned that appellant had a hernia and recommended repeat MRI scan and a second general surgical evaluation. Work restrictions were for sedentary duty. Appellant, however, did not submit a report from Dr. Mutchnick and in a July 30, 2004 letter, the Office advised appellant that she would have 30 days in which to provide this report.

By decision dated September 20, 2004, the Office terminated appellant's compensation benefits effective September 16, 2004, on the grounds that the medical opinion of Dr. Miskew established that she no longer had residuals of her employment-related left hip strain.² In a letter postmarked November 1, 2004, appellant requested a review of the written record and submitted additional medical evidence. In a February 22, 2005 decision, an Office hearing representative denied the request on the grounds that it was untimely filed.

² On October 23, 2004 appellant filed a recurrence claim. By letter dated October 28, 2004, the Office informed appellant that her description identified a new injury and she should therefore file a Form CA-1. The record before the Board does not indicate that the Office has issued a decision on this claim.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order justifying termination or modification compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment. Furthermore, the right to medical benefits for accepted condition is not limited to the period of entitlement of disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.³

ANALYSIS -- ISSUE 1

The issue in this case is whether the Office properly terminated appellant's benefits for her accepted left hip strain only. The Board finds the weight of the medical opinion evidence rests with Dr. Miskew, the second opinion examiner. In a report dated April 21, 2004, Dr. Miskew noted his review of the statement of accepted facts and medical record and appellant's complaints of left hip pain. He reported that Dr. Pratt's MRI scan findings and two previous MRI scans of the left hip were reported as normal. On examination he found full range of motion of the back and only slight discomfort in the left groin with normal straight leg raising test. Dr. Miskew noted that pelvis and left hip x-rays revealed the acetabular cyst and lumbar spine x-rays showed significant narrowing of the L5-S1 disc space. He found no other significant abnormality. He advised that appellant's left groin tenderness was compatible with a neuromuscular strain. Dr. Miskew concluded that he did not believe that appellant had an orthopedic problem, advising that her symptoms and complaints appeared to be coming from her left inguinal area and were most likely due to an inguinal hernia. He stated that it was unlikely that a strain injury could go on for so long and that from an orthopedic standpoint, appellant could be at full duty but should seek surgical consultation regarding the hernia. In a work capacity evaluation dated May 19, 2004, Dr. Miskew advised that appellant could work her usual job without restrictions.

The medical evidence submitted by appellant includes a number of treatment notes from her attending physiatrist, Dr. Pratt, who noted continued complaints of low back, hip, groin and leg discomfort and reported MRI scan findings of a small paralabral cyst. Dr. Frevert, an orthopedic surgeon, also provided treatment notes in which he opined that appellant's continued complaints were possibly due to a hernia and recommended surgical evaluation.

The medical evidence most contemporaneous with the termination includes a treatment note dated July 19, 2004, in which Dr. Pratt addressed appellant's report that a surgical evaluation had not revealed a hernia. He advised that she had complaints of low back and thigh discomfort with examination findings of palpable tenderness involving the groin and proximal thigh on the left as well as the left lumbosacral region. Straight leg raising reproduced groin and low back symptoms. His impression was chronic involvement with groin and thigh discomfort as well as low back discomfort and he recommended that she return to Dr. Frevert. In an

³ Fred Simpson, 53 ECAB 768 (2002).

August 11, 2004 treatment note, Dr. Frevert advised that appellant continued to have pain with movement of the left hip and anterior muscular wall with point tenderness around the pubic ramus along the left side. He stated that the labral cyst found on the MRI scan could cause the pain and stated hip arthroscopy should be considered. He advised that he was still concerned that appellant had a hernia and recommended repeat MRI scan and a second general surgical evaluation. Work restrictions were for sedentary duty. Although requested by the Office, appellant did not provide a report from a general surgeon Dr. Mutchnick.

For a condition to be accepted as employment related, the employee must submit rationalized medical evidence supporting a causal relationship⁴ in which the physician reviews the employment factors identified by appellant as causing his or her condition and, taking these factors into consideration as well as findings upon examination and the medical history, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.⁵ In this case, the Office has not accepted that a hernia, a labral cyst, degenerative disc disease of the lumbar spine or a pain condition were caused by factors of appellant's federal employment. The labral cyst reported by Dr. Pratt was not found on two previous hip MRI scans of October 4, 1995 and July 9, 2001, which were reported as normal. Furthermore, neither Dr. Pratt nor Dr. Frevert provided an opinion that the cause of appellant's continued complaints was the July 28, 1995 employment injury. They did not provide an opinion regarding the causal relationship of their diagnoses to appellant's accepted 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.⁶ The record therefore does not support that appellant had residuals of her accepted left hip strain.

Dr. Miskew examined appellant and reviewed her medical records and opined that there was no evidence that her accepted left hip strain remained active. Appellant submitted no probative medical evidence to show that she had continuing residuals of this condition. Accordingly, the Office met its burden of proof to terminate appellant's compensation benefits for this condition effective September 16, 2004.⁷

LEGAL PRECEDENT -- ISSUE 2

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. If the request is not made within 30 days, a claimant is not entitled to a hearing or a review of the written record as a matter of right.⁸ The Board has held that the Office, in its broad discretionary authority in the administration of the

⁴ *Manuel Gill*, 52 ECAB 282 (2001).

⁵ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

⁶ *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Gloria J. Godfrey*, 52, ECAB 486 (2001).

⁸ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

Federal Employees' Compensation Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.⁹

ANALYSIS -- ISSUE 2

In this case, the Office denied appellant's request for a review of the written record on the grounds that it was untimely filed. In its February 22, 2005 decision, the Office stated that appellant was not, as a matter of right, entitled to a written record review since her request, postmarked November 1, 2004, had not been made within 30 days of its September 20, 2004 decision. The Office noted that it had considered the matter in relation to the issue involved and indicated that appellant's request was denied on the basis that the issue in the instant case could be addressed through a reconsideration application. As appellant's request for a review of the written record was postmarked November 1, 2004, more than 30 days after the date of issuance of the Office's prior decision dated September 20, 2004, the Office was correct in stating in its February 22, 2005 decision that appellant was not entitled to a review of the written record as a matter of right as her request was untimely filed.

While the Office also has the discretionary power to grant a request for a written record review when a claimant is not entitled to such as a matter of right, the Office, in its February 22, 2005 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request on the basis that the issue of whether the Office properly terminated her compensation benefits could be addressed through a reconsideration application. The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.¹⁰ In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's request for a review of the written record which could be found to be an abuse of discretion.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective September 16, 2004. The Board further finds that the Office did not abuse its discretion in denying her request for a review of the written record.

⁹ *Id.*

¹⁰ See *Claudio Vazquez*, 52 ECAB 496 (2001); *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 22, 2005 and September 20, 2004 be affirmed.

Issued: September 14, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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