United States Department of Labor
Employees' Compensation Appeals Board

KERMITH SALLES, Appellant	)	
and	)	**Docket No. 05-1789**
	)	**Issued: April 4, 2006**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Washington, DC, Employer	)	

Appearances:
Stephen Scavuzzo, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 29, 2005 appellant, through his attorney, filed a timely appeal of a May 31, 2005 merit decision of an Office of Workers' Compensation Programs' hearing representative which affirmed the denial of his claim of a consequential injury and denied authorization for surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that he sustained a consequential injury of avascular necrosis due to his accepted September 30, 1992 employment injury; and (2) whether the Office properly denied authorization for total right hip replacement surgery.

FACTUAL HISTORY

On October 5, 1992 appellant, then a 34-year-old personnel clerk, filed a traumatic injury claim alleging that on September 30, 1992 he experienced sharp pain in his low back which

radiated down his legs after moving a cart loaded with boxes. He stopped work on October 1, 1992. By letter dated January 22, 1993, the Office accepted appellant's claim for lumbar disc syndrome.[1]

The Office received a November 2, 1998 medical report from Dr. William Dorn, a Board-certified orthopedic surgeon, who noted appellant's complaints of pain in the low back and right hip. He reviewed a history of appellant's September 30, 1992 employment injury, head and back injuries sustained in a 1987 motor vehicle accident, fractured right wrist sustained in 1989 and fractured right foot which occurred in 1992, when his leg gave out on him. Dr. Dorn diagnosed a lumbosacral strain. He also diagnosed avascular necrosis of the right femoral head based on an x-ray of the right hip. On November 16, 1998 Dr. Dorn found that appellant was unable to work and referred him to Dr. Peter S. Trent, a Board-certified orthopedic surgeon, for a second opinion medical examination. Dr. Dorn stated that appellant might be a candidate for a total hip replacement, but indicated that other procedures may be more appropriate since appellant was 40 years old. In a December 7, 1998 report, Dr. Trent recommended a total right hip replacement for appellant's avascular necrosis. On December 15, 1998 he requested the Office to authorize the proposed surgery.

In a letter dated January 4, 1999, the Office denied authorization for the proposed right hip surgery. The Office advised appellant that his case was only accepted for a low back radiculopathy condition which had been in a closed status since March 4, 1994. The Office further advised him that there was insufficient medical evidence to establish that his right hip condition was causally related to the accepted September 30, 1992 employment injury.

In a letter dated April 18, 2000, the Office informed appellant that his claim should have been accepted for lumbar strain and not lumbar disc syndrome. The Office noted that a March 4, 1993 magnetic resonance imaging (MRI) scan had found no abnormalities in his low back and, thus, the radiculopathy condition was not substantiated. The Office concluded that no other conditions were caused or aggravated by the September 30, 1992 work incident.

In a January 4, 2001 report, Dr. Trent stated that a November 2000 MRI scan found that appellant's left hip was normal and an x-ray of his lumbar spine of that date showed productive degenerative changes in the posterior elements, particularly at L4 and L5. He opined that his back and hip problems were causally related to the September 30, 1992 employment injury. Dr. Trent stated that appellant did not have a history of back problems prior to this injury. Appellant had previously hurt his back but received medical treatment and was completely asymptomatic at the time of the employment injury. Dr. Trent further noted that right hip surgery relieved pain but he experienced residual back pain.

On January 8, 2001 appellant filed a claim alleging that he sustained a recurrence of disability beginning September 30, 1992. He stated that he underwent right hip replacement surgery on February 3, 1999 and would soon need to have his left hip replaced.

[1] A May 24, 1993 letter revealed that appellant's excepted appointment as a personnel clerk was scheduled to expire on August 7, 1993 and the employing establishment was not going to convert him to a full-time permanent position at that time due to budgetary constraints. He resigned from the employing establishment on December 31, 1993.

On May 17, 2001 an Office medical adviser reviewed the case record and stated that appellant sustained a lumbar strain as a result of the September 30, 1992 employment incident and that it did not aggravate any preexisting back or hip condition. He found that appellant did not have any residuals of the accepted employment injury because a sprain of the back would resolve in two to three months without residuals. The Office medical adviser opined that there was no causal relationship between appellant's right hip condition and subsequent hip replacement surgery and the accepted employment injury. He explained that the hip surgery was performed for avascular necrosis and osteoarthritis, which were not related to the accepted work-related injury.

By letter dated September 14, 2001, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed to Dr. Kevin E. McGovern, a Board-certified orthopedic surgeon, for a second opinion medical examination. In an October 3, 2001 medical report, he provided a history of appellant's September 30, 1992 employment injury and medical treatment. Dr. McGovern noted that a month following the injury appellant's right leg gave out which caused him to fall and resulted in a fractured foot that required a cast. Appellant was subsequently diagnosed as having avascular necrosis of the right hip which required right hip replacement surgery. He complained of severe pain in his back, both legs and shoulders. An MRI scan of the left shoulder revealed degenerative arthritis in the acromioclavicular joint. Dr. McGovern noted that appellant was involved in a motor vehicle accident and sustained a severe head injury which caused partial paralysis of both his left upper and lower extremities with ongoing deformity in his left hand and limited use and strength in his upper and lower extremities. On physical examination, he reported limited range of motion of the back, marked weakness in the left leg, a deformed left hand and good motion of the left shoulder. On x-ray examination, Dr. McGovern noted that the pelvis and right hip were in a good position and that the lumbar spine had minimal degenerative disc disease. He diagnosed lumbar strain with radiculopathy due to the September 30, 1992 employment injury and avascular necrosis that was unrelated to the accepted injury. Dr. McGovern stated that the avascular necrosis condition was probably related to appellant's head injury and the use of steroids at that time. He did not find any preexisting condition that was aggravated by the work-related injury. Dr. McGovern stated that appellant had residuals of the employment injury, although they were partly the result of symptom magnification, as well as symptoms of his prior injuries and his symptoms which were not supported by objective medical findings. He opined that there was no medical connection between appellant's hip condition and subsequent surgery and the September 30, 1992 employment injury. Dr. McGovern noted that he was treated for avascular necrosis of the left hip in 1998 and explained that this condition could happen as a result of injuries to the hip, but there was no evidence of a significant injury to his hip and the mechanism of injury would not predispose to a significant injury to his hip. Further, avascular necrosis resulted from various medications, including anti-seizure medications and steroids which are frequently used in patients with head injuries. It could also result from excessive drinking and various metabolic diseases or be idiopathic in nature with no known apparent causes. Dr. McGovern concluded that appellant's avascular necrosis was most likely the result of either his head injury or idiopathic in nature.

By decision dated November 8, 2001, the Office found that appellant's avascular necrosis and resultant hip replacement surgery were not causally related to the accepted employment

injury based on Dr. McGovern's medical report.[2] The Office, however, expanded the acceptance of appellant's claim to include a lumbar strain with radiculopathy and found that he was entitled to medical benefits for the treatment of his low back residuals.

The Office received a March 29, 2002 report from Dr. Hampton J. Jackson, Jr., a Board-certified orthopedic surgeon, which indicated that appellant underwent a discogram on March 25, 2002. The procedure revealed a ruptured disc at L5-S1. Dr. Jackson opined that this condition was caused by the September 30, 1992 employment injury. On July 30, 2002 he requested authorization for surgical decompression at L5-S1. On September 23, 2002 an Office medical adviser reviewed Dr. Jackson's report and stated that the proposed surgery was not warranted. The Office medical adviser noted that the results of a discectomy were unpredictable at best and recommended a second opinion medical examination. On May 17, 2003 appellant underwent back surgery which was performed by Dr. Jackson.

By letter dated May 8, 2003, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed to Dr. German H. Nader, a Board-certified orthopedic surgeon, for a second opinion medical examination to determine, among other things, whether his hip condition was medically connected to the September 30, 1992 employment injury. In a June 27, 2003 report, Dr. Nader reviewed a history of appellant's September 30, 1992 employment injury, 1986 back injury, 1987 head injury and 1992 incident where his leg gave out on him and his medical treatment. On physical examination, he reported weakness of the left hand, limited range of motion of the left lower extremity and back pain. Dr. Nader reviewed appellant's medical records. He diagnosed status post percutaneous discectomy at L5-S1, weakness of the upper and lower extremities on the left side secondary to a brain injury and status post total hip replacement on the right side secondary to aseptic necrosis of the right hip. Dr. Nader opined that appellant's September 30, 1992 employment injury was mild to moderate in nature and did not cause necrosis of the right hip or the fractures he sustained when his leg gave out on him. He further opined that appellant's back, hip and left upper and lower extremity problems were not related to the employment injury. The mild to moderate employment injury did not aggravate any preexisting back condition, if so, it was only temporary. Dr. Nader stated that appellant was disabled to the extent that he could only perform sedentary work but his disability was not caused by the September 30, 1992 employment injury. Rather, it was due to the severe head and back injuries he sustained with paralysis of the left upper and lower extremities. Dr. Nader concluded that appellant continued to have residuals of a fractured right wrist and right foot and right hip replacement surgery which were not related to the accepted employment injury.

On October 17, 2003 the Office issued a decision, finding that appellant did not sustain avascular necrosis of the right hip as a consequential injury causally related to the September 30, 1992 employment injury and that his right hip replacement surgery was not necessitated by the accepted injury.

[2] The Office, in the November 8, 2001 decision, inadvertently referred to appellant's left hip rather than his right hip in denying his claim.

On November 16, 2003 appellant requested an oral hearing before an Office hearing representative. At the June 28, 2004 hearing, his attorney contended that the October 17, 2003 decision was issued in error as it failed to address the issue of whether appellant's request for back surgery and resultant disability were causally related to the September 30, 1992 employment injury. Counsel noted that the Office's November 8, 2001 decision found that appellant's back condition was work related and authorized medical treatment for this condition.

By decision dated May 31, 2005, an Office hearing representative affirmed the October 17, 2003 decision. The hearing representative noted that the only issue was whether appellant's claim should be expanded to accept the condition of avascular necrosis since no formal decision had been issued concerning his back surgery. The Office found that the weight of the medical opinion evidence rested with Dr. McGovern and Dr. Nader, both of whom opined that the diagnosed condition and need for surgery were not due to the September 30, 1992 employment injury.

LEGAL PRECEDENT -- ISSUE 1

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.[3]

Appellant bears the burden to establish his claim for a consequential injury.[4] As part of this burden, he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.[5] Rationalized medical evidence is evidence from a physician which relates a work incident or factors of employment to a claimant's condition, with stated reasons.[6] The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.[7]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a lumbar strain as a result of the employment-related September 30, 1992 injury. He contends that he sustained a consequential

[3] *Albert F. Ranieri*, 55 ECAB ___ (Docket No. 04-22, issued July 6, 2004).

[4] *See Charles W. Downey*, 54 ECAB 421 (2003).

[5] *Id.*

[6] *Id.*

[7] *Gary L. Fowler*, 45 ECAB 365 (1994).

injury of avascular necrosis of the right hip due to the accepted employment injury.[8] Dr. Dorn, appellant's attending physician, diagnosed avascular necrosis of the right femoral head based on an x-ray examination. However, he failed to address whether the diagnosed condition was causally related to the accepted employment injury. Dr. Dorn merely provided a history of the September 30, 1992 injury.

Dr. McGovern, an Office referral physician, submitted an October 3, 2001 medical report in which he provided an accurate factual and medical background. He conducted a thorough medical examination and diagnosed lumbar strain with radiculopathy causally related to the September 30, 1992 employment injury. Dr. McGovern also diagnosed avascular necrosis that was not related to the accepted work-related injury. Although he stated that this condition could result from a hip injury, Dr. McGovern found no evidence of an injury to appellant's hip significant enough to cause such a condition. He noted other possible causes for avascular necrosis, including the use of anti-seizure medications and steroids or that it was idiopathic in nature.

Dr. Nader, another Office referral physician, submitted a June 27, 2003 report which provided an accurate factual and medical background and his findings on medical examination. He diagnosed status post percutaneous discectomy at L5-S1, weakness of the upper and lower extremities on the left side secondary to a brain injury and status post total hip replacement on the right side secondary to aseptic necrosis of the right hip. Dr. Nader opined that appellant's September 30, 1992 employment injury was mild to moderate in nature and did not cause the problems he complained about, including aseptic necrosis of the right hip. He further opined that appellant's hip problems were not related to the employment injury because they occurred prior to the September 30, 1992 work-related injury which did not aggravate any preexisting injuries.

The opinions of Dr. McGovern and Dr. Nader were reviewed by an Office medical adviser, who opined that there was no medical connection between appellant's right hip condition and the accepted employment injury.

The Board finds that the opinions of Dr. McGovern and Dr. Nader constitute the weight of the medical opinion evidence. They support that appellant did not sustain a consequential avascular necrosis injury causally related to the September 30, 1992 employment injury as they are sufficiently rationalized and based on a proper factual and medical background.

LEGAL PRECEDENT -- ISSUE 2

Section 8103 of the Federal Employees' Compensation Act[9] provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services,

[8] Appellant contends that the Office failed to consider the issue of whether he sustained a consequential back injury causally related to the September 30, 1992 employment injury and whether back surgery was warranted. The record does not establish that the Office issued a final decision regarding this claim. The Board's jurisdiction is limited to consider and decide appeals from final decisions of the Office issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c), 501.3(d)(2); *William N. Downer*, 52 ECAB 217 (2001).

[9] 5 U.S.C. §§ 8101-8193.

appliances and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation.[10] In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under section 8103, with the only limitation on the Office's authority begin that of reasonableness.[11] 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 deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[12] In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury.[13]

Proof of causal relationship in a case such as this must include supporting rationalized medical evidence. Thus, in order for a surgery to be authorized, appellant must submit evidence to show that the requested procedure is for a condition causally related to the employment injury and that it is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.[14]

ANALYSIS -- ISSUE 2

In December 1998 Dr. Trent, appellant's attending physician, requested authorization to perform total right hip replacement surgery for his avascular necrosis condition. However, he did not provide any explanation why the proposed surgery was necessary due to residuals of the accepted employment injury.

The Office referral physicians, Dr. McGovern and Dr. Nader, both opined that the total right hip replacement surgery was not warranted and explained that it was proposed to treat avascular necrosis of the right hip which was not caused by the September 30, 1992 employment injury. An Office medical adviser also opined that the right hip replacement surgery was not warranted as the diagnosed condition was not causally related to the accepted employment.

The Board finds that the opinion of Dr. McGovern and Dr. Nader are based upon a proper factual and medical background such that it constitutes the weight of the medical opinion evidence in finding that the surgical procedure at issue in this case was not necessary treatment for the diagnosed condition.

[10] 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

[11] *James R. Bell*, 52 ECAB 414 (2001).

[12] *Claudia L. Yantis*, 48 ECAB 495 (1997).

[13] *Cathy B. Mullin*, 51 ECAB 331 (2000).

[14] *Id.*

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a consequential injury of avascular necrosis due to his accepted September 30, 1992 employment injury. The Board further finds that the Office properly denied authorization for total right hip replacement surgery.

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2006
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