

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

D.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Wilmington, DE, Employer**

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**Docket No. 06-200
Issued: August 3, 2006**

Appearances:
D.W., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On November 3, 2005 appellant filed a timely appeal of a June 20, 2005 merit decision by the Office of Workers' Compensation Programs which denied modification of a June 16, 2003 decision. In the June 16, 2003 decision, the Office affirmed a May 23, 2002 decision denying her claim for a recurrence. 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 July 18, 2001 causally related to her January 20, 2000 employment injury.

FACTUAL HISTORY

On January 21, 2000 appellant, then a 43-year-old letter carrier, filed a traumatic injury claim alleging that on January 20, 2000 she slipped on ice, but did not fall. She stopped work on January 20, 2000. Appellant returned to work on January 22, 2000 with restrictions and returned to full duty on March 15, 2000. The Office accepted the claim for right hip contusion and strain, contusion to the buttock and reflex sympathetic dystrophy.

In a March 22, 2000 report, Dr. Frank B. Sarlo, Board-certified in physical medicine and rehabilitation, and a treating physician, opined that on examination appellant had “essentially no objective findings.” He also indicated that appellant’s hip x-ray was unremarkable for any fracture or degenerative changes and noted that “there is essentially a moderate to fair amount of symptom magnification and that she should be able to conduct her regular work activities based on her objective findings.”

In an April 18, 2000 report, Dr. Ross M. Ufberg, a Board-certified physiatrist and a treating physician, noted that appellant was seen for complaints of right thigh pain. He noted appellant’s history of injury and treatment and conducted a physical examination, which included findings that she had full range of motion of the lumbosacral spine and tenderness over the iliopsoas and adductor muscles. Dr. Ufberg diagnosed right adductor and iliopsoas strain, which he opined were causally related to the “industrial accident of [January 20, 2000]” and recommended therapy and reevaluation in a month. In reports dated April 25, 2000, he advised that appellant was temporarily totally disabled for two weeks. In a May 8, 2000 disability certificate, Dr. Ufberg indicated that appellant was totally disabled from May 8 to 18, 2000. Appellant returned to light duty on June 19, 2000.

In a July 14, 2000 report, Dr. Ufberg indicated that appellant could work with restrictions. He continued to submit reports restricting appellant’s activities.

In a July 18, 2000 report, Dr. Charles A. Mauriello, an osteopath and Board-certified orthopedic surgeon, to whom appellant was referred by the Office, noted appellant’s history of injury and treatment. He noted that x-rays of the hip from January 24, 2000 were normal and conducted a physical examination. Dr. Mauriello indicated that no tenderness was evident and that hyperextension of the spine caused a pulling in the anterior right groin. He noted that appellant had an unresolved right adductor thigh strain and right popliteal synovitis that was work related. Dr. Mauriello noted that appellant’s right femoral nerve neuritis or a right femoral hernia should be considered work related and opined that appellant could return to her preinjury level with the next four months. In an August 18, 2000 report, he noted that recent diagnostic tests of the right popliteal fossa and right lower extremity were normal. Dr. Mauriello diagnosed a chronic strain of the right adductor thigh muscle which was employment related and a “form of variant reflex sympathetic dystrophy affecting the right lower extremity.” He recommended that appellant continue to follow up with her treating physician, proceed with a general surgical evaluation to rule out a right femoral hernia and institute a hydrotherapy program. Dr. Mauriello indicated that appellant should obtain an evaluation by an anesthesiologist if her symptoms persisted.

On October 24, 2000 appellant was limited to working six hours per day and returned to working eight hours per day on December 4, 2000 by her physician, Dr. Ufberg.

On March 30, 2001 the Office referred appellant along with a statement of accepted facts, and the medical record to Dr. Raafat Z. Abdel-Misih, a Board-certified physiatrist, for an impartial medical evaluation to resolve the conflict in opinion between appellant’s physician, Dr. Ufberg and Dr. Mauriello, the second opinion physician, regarding the extent of appellant’s injury-related impairment.

In an April 16, 2001 report, Dr. Abdel-Misih noted appellant's history of injury and treatment. He examined appellant and noted that special attention was given to the "right groin in both erect and supine positions, showed no evidence of hernia, no palpable masses. There was minimal tenderness along the groin crease and palpation of the anterior thigh muscle showed no significant masses." Dr. Abdel-Misih also advised that his examination of the range of motion of the hip joint showed no limitations with the exception of slight limitation of flexion, compared to the left side, but he added that extension and rotation of the hip was normal. He also noted that the rest of the abdominal examination showed no significant findings and no evidence of neurological deficit. Dr. Abdel-Misih advised that his impression was that of right groin pain of muscular origin with no evidence of hernia, hematoma, abscess or tumors. He opined that appellant could "fully resume her activities."

On June 25, 2001 the employing establishment advised the Office that appellant was released to full duty. In a June 25, 2001 duty status report, Dr. Ufberg released appellant to full duty with restrictions.

In a July 30, 2001 report, Dr. Stephen M. Beneck, a Board-certified physiatrist and a treating physician, noted appellant's history of injury which included right groin and medial thigh pain after a "near fall 18 months ago." He indicated that appellant's "symptoms have improved but have not resolved." Dr. Beneck advised that the "exact pain generator for her ongoing symptoms is unclear," and noted that appellant did not have symptoms of acute hip joint synovitis. He indicated that there was a "possibility of tendinitis involving the iliopsoas tendon."

In an August 2, 2001 report, Dr. Ufberg, noted that appellant reported a worsening of her right thigh pain. He noted that appellant related that it was aggravated with climbing in and out of a vehicle, as well as with climbing stairs. Dr. Ufberg placed appellant on climbing restrictions. In a disability certificate of the same date, he opined that appellant had sharp anterior thigh pain and muscles over the medial thigh. Dr. Ufberg advised that appellant's condition was permanent and that she might be intermittently disabled "[one to two] days at a time when weather is damp or rainy, more than likely once a month." He explained that, during flare-ups, appellant would be "totally unable to work in any capacity."

In a July 27, 2001 report, Dr. Samuel Romirowsky, a licensed psychologist, noted that appellant was referred to him by Dr. Ufberg regarding her persistent pain, frustration and depression. He diagnosed appellant with moderate to severe depression, secondary to her work injury of January 2000 and recommended outpatient counseling.

On August 2, 2001 appellant claimed a recurrence of disability on July 18, 2001 causally related to the January 20, 2000 employment injury. She alleged that she stopped work intermittently on July 18, 19 and 20, 2001. The employing establishment indicated that appellant was cleared for full duty on June 25, 2001. The employing establishment advised that appellant's workload was light and on July 18, 2001 she was assigned additional work to give her eight hours. Additionally, it was noted that appellant worked full duty without restrictions from around June 26 until July 17, 2001. In a separate statement dated August 3, 2001, appellant alleged that her "condition had never completely disappeared."

In an August 13, 2001 report, Dr. Beneck examined appellant, noted normal x-rays, and indicated that appellant had chronic right groin pain of “unclear” etiology. He opined that it was doubtful that the pain was from the hip joint because the x-rays and MRI scan were completely normal. Dr. Beneck also noted that it was over a year and a half since appellant’s injury and that it was “possible” that she had psoasitis or mild femoral neuropathy in that region.

In an August 23, 2001 report, Dr. Ufberg provided restrictions for appellant and continued to submit reports in which he opined that appellant could only perform limited duties.

In memoranda dated September 5 and December 14, 2001, the employing establishment controverted appellant’s claim for a recurrence.

In an April 23, 2002 report, Dr. Ufberg diagnosed right adductor and iliopsoas strain secondary to appellant’s employment-related incident of January 20, 2000. In a duty status report of the same date, he indicated that appellant could not perform full duty and prescribed restrictions for work. Dr. Ufberg also continued to submit notes and reports dating from March 19, 2001.

By decision dated May 23, 2002, the Office denied appellant’s claim for a recurrence of disability beginning July 18, 2001.

By letter dated June 2, 2002, appellant requested a hearing, which was held on March 11, 2003.

In an August 5, 2002 report, Dr. Ufberg noted that appellant was avoiding walking routes and was doing mounted delivery. He indicated that appellant was tolerating these work activities and diagnosed right adductor and iliopsoas strain. Dr. Ufberg continued to submit reports. By letter dated March 13, 2003, appellant’s representative enclosed additional evidence from Dr. Ufberg, which included his treatment records.

In a report dated March 10, 2003, Dr. Ufberg diagnosed right adductor and iliopsoas pain and opined that they were causally related to the January 20, 2000 employment injury. He addressed appellant’s absence from work on July 18, 2001 and noted that, on July 19, 2001, appellant reported via telephone, that she had “bad days with right thigh pain and stiffness worse with damp weather. She states she has to move more slowly on her bad days with pain.” Dr. Ufberg stated that on August 2, 2001 appellant reported “worsening of her right thigh pain which has been almost constant over recent days. She stated that it was aggravated with climbing in and out of the vehicle, as well as with climbing stairs.” Dr. Ufberg advised that appellant was on work restrictions and that her first visit after July 18, 2001 was on August 21, 2001. He noted finding physical tenderness over the iliopsoas muscle and adductor muscles in the mid portion of the thigh and opined that appellant’s “absences from work due to her right thigh symptoms were reasonable and medically necessary and directly related to her work accident of [January 20, 2000].”

By decision dated June 16, 2003, the Office hearing representative affirmed the May 23, 2002 decision. The Office also noted that Dr. Ufberg had not attributed appellant’s complaints to employment factors based on objective evidence.

By letter dated January 13, 2004, appellant appealed to the Board. By letter dated May 4, 2004, appellant's representative asked to withdraw appellant's appeal so that he could request reconsideration from the Office. The Board issued an order dismissing appeal on May 27, 2004.¹

In support of the request for reconsideration, appellant's representative submitted a March 19, 2004 report from Dr. Selina Xing, a Board-certified physiatrist. She noted appellant's history of injury and treatment, which included that she initially returned to work with restrictions and was subsequently returned to full duty. Dr. Xing advised that appellant related that her symptoms "would always return after walking for a prolonged period of time." She examined appellant and reported tenderness to palpation along the right groin crease in the midline, over the iliopsoas and rectus femoris, and the adductor muscle-tendon junction area. Dr. Xing noted right groin soreness with sustained hip flexion and hip maneuvers on the right and opined that appellant had rectus femoris and possible adductor muscle tendinitis secondary to a right groin strain. She noted that appellant's right groin pain was muscular with no evidence of hernia, hematoma, abscess or tumor. Dr. Xing explained that there was "more tenderness in the rectus femoris than in the adductor muscle junction area, which suggested muscle tendinitis of the rectus femoris and possible adductor muscle involvement." She opined that the right groin pain had components suggestive of an exacerbation of hip arthritis and that appellant had "persistent right groin pain secondary to rectus femoris, possible iliopsoas and adductor muscle tendinitis due to strain/sprain and exacerbation of right hip arthritis, myofascial pain, somatic dysfunction as well as ambulation dysfunction." Dr. Xing advised that appellant's right groin pain was permanent and was causally related to the January 20, 2000 work injury. She explained that, between January 21, 2000 and July 18, 2001, appellant related that she was not totally able to follow the work restrictions for her job and that no modified duty was available. Dr. Xing stated that appellant's symptoms of right groin irritation recurred with prolonged walking, carrying mailbags and using her right leg to operate motor vehicle gas and brake pedals. She indicated that these activities indirectly aggravated the groin area interfering with the muscle/tendon healing process despite physical therapy. Dr. Xing opined that the "constant right groin irritation seems likely to have caused a recurrence of injury, which she reported July 18, 2001." She indicated that appellant could work full time with restrictions on prolonged walking and going up and down steps and indicated that the mail that appellant carried should be limited to less than 25 pounds.

In a July 7, 2004 decision, the Office denied modification of its prior decision.

On September 29, 2004 appellant appealed to the Board. On November 8, 2004 appellant asked to withdraw the appeal so that she could request reconsideration. The Board dismissed the appeal on January 7, 2005.²

In support of the request for reconsideration, appellant's representative submitted a September 24, 2004 report from Dr. Xing. She noted treating appellant for right groin pain due the work injury of January 20, 2000, which included a right hip injection on July 13, and August 9, 2004. Dr. Xing noted that, "in my opinion, [appellant's] ongoing right groin pain was

¹ Docket No. 04-712 (issued May 27, 2004).

² Docket No. 05-94 (issued January 7, 2005).

directly related to her work-related injury (slip and fall on ice) on January 20, 2000.” She stated that appellant did not have a previous history of right groin pain prior to the injury and opined that appellant’s continued symptoms of right groin pain were due to an “exacerbation of right hip arthritis and rectus femoris iliopsoas and adductor muscle tendinitis/sprain that usually requires extended time for the healing process provided there is no constant irritation to this area for complete healing of the tendinitis.” Dr. Xing also indicated that despite her work restrictions, appellant did not adhere to them secondary to job requirements and no modified duties being available. She opined that the work-related activities as a mail carrier aggravated her right groin symptoms and interfered with the muscle/tendon healing process and exacerbated her right hip arthritic symptoms. Dr. Xing advised that appellant sustained a permanent right groin injury secondary to rectus femoris, iliopsoas and adductor muscle tendinitis due to strain/sprain and exacerbation of right hip arthritis. She opined that appellant’s right groin pain was permanent and causally related to the January 20, 2000 work injury.

By decision dated June 20, 2005, the Office denied modification of the previous decisions.

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.³

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.⁴

The Office’s procedures require that in cases where recurrent disability for work is claimed within 90 days or less from the first return to duty, the attending physician should describe the duties which the employee cannot perform and the demonstrated objective medical findings that form the basis for the renewed disability for work.⁵

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.⁶

³ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB ___ (Docket No. 04-887, issued September 27, 2004).

⁴ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, Recurrences, Chapter 2.1500.6(a) and (b) (September 2003).

⁶ *Walter D. Morehead*, 31 ECAB 188 (1986).

ANALYSIS

The Office accepted that appellant sustained a right hip contusion and strain, contusion to the buttock and reflex sympathetic dystrophy in the performance of duty on January 20, 2000. The employing establishment advised that she returned to full duty on June 25, 2001 and that appellant worked full duty without restrictions from around June 26 until July 17, 2001. Appellant filed a notice of recurrence of disability on August 2, 2001 alleging disability beginning July 18, 2001. However, she did not submit sufficient reasoned medical evidence to establish that her present condition was causally related to her accepted injury. For example, appellant did not submit a medical report in which her treating physician explained why any disability beginning July 18, 2001 would be related to the accepted injury.

Appellant submitted several reports from her treating physicians. They included reports in which Dr. Beneck indicated that her “symptoms have improved but have not resolved” and that her symptoms were of an “unclear” etiology. Appellant also submitted numerous reports from Dr. Ufberg. They included an August 2, 2001 report, in which he noted that she related that her condition was aggravated with climbing in and out of a vehicle, as well as with climbing stairs and placed appellant on climbing restrictions. However, at this point, Dr. Ufberg did not attribute her condition to specific factors of appellant’s employment or opine that appellant was unable to work on or after July 18, 2001 due to her accepted employment injury. He also provided a disability certificate of the same date in which he advised that appellant’s condition was permanent and opined that, during inclement weather and at least monthly, appellant would be “totally unable to work in any capacity.” However, this report is insufficient as Dr. Ufberg did not provide any objective findings to support his conclusion. Furthermore, he did not explain how or why employment factors caused or aggravated a recurrence on or after July 18, 2001 due to her accepted employment injury. The Board notes that this is particularly important in light of Dr. Beneck’s August 13, 2001 report noting normal test results and opining that the etiology of appellant’s symptoms was “unclear.” In an August 23, 2001 report, Dr. Ufberg provided restrictions for appellant and continued to submit reports in which he opined that appellant could only perform limited duties; however, he failed to support his opinion with objective findings.⁷

On March 10, 2003 Dr. Ufberg opined that the diagnosed conditions of right adductor and iliopsoas strain and were causally related to the employment injury of January 20, 2000. The Board notes; however, that the Office accepted the claim for right hip contusion and strain, contusion to the buttocks and reflex sympathetic dystrophy and Dr. Ufberg has not provided medical reasoning explaining how these conditions are related to the accepted conditions. Furthermore, he noted that he did not examine appellant in relation to her alleged recurrence of July 18 to August 21, 2001. Dr. Ufberg opined that appellant’s “absences from work due to her right thigh symptoms were reasonable and medically necessary and directly related to her work accident of [January 20, 2000].” The Board notes that this report is of limited probative value as he did not examine appellant until August 21, 2001, provide any objective findings or otherwise provide medical rationale explaining how the employment injury contributed to the claimed

⁷ See *Laurie S. Swanson*, 53 ECAB 517 (2002) (where a physician’s report does not indicate an objective worsening of a claimant’s condition, and the physician’s statements regarding a claimant’s ability to work consist primarily of a repetition of the claimant’s complaints that she hurt too much to work, this is not a basis for payment of compensation).

disability. The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence.⁸ In Dr. Ufberg's reports most contemporaneous to the alleged recurrence, the physician did not specifically opine that the claimed disability was due to the accepted conditions. Other reports from Dr. Ufberg did not specifically address whether appellant's claimed recurrence of disability beginning July 18, 2001 was causally related to her accepted employment injury.

Appellant also submitted two reports from Dr. Xing. In her March 19, 2004 report, she opined that appellant had rectus femoris and possible adductor muscle tendinitis secondary to a right groin strain. Dr. Xing advised that appellant's right groin pain was permanent in nature and opined that it was causally related to the work-related injury of January 20, 2000. However, most of the conditions diagnosed by her were not conditions accepted by the Office. Furthermore, pain is considered a symptom, not a diagnosis and does not constitute a basis for payment of compensation in the absence of objective findings of disability.⁹ In any event, Dr. Xing did not provide medical reasoning explaining how she arrived at her conclusion on causal relationship.¹⁰ Although she provided appellant's explanation for the time frame from January 21, 2000 through July 18, 2001, in which she alleged she was not totally able to follow the work restrictions secondary to her job requirements and that no modified duty was available. Dr. Xing did not provide any objective findings to support this allegation. Furthermore, the Board notes that these findings contradict the employing establishment, who indicated that appellant worked full duty without restrictions from June 26 to July 17, 2001. Although Dr. Xing opined that the "constant right groin irritation seems likely to have caused a recurrence of injury, which she reported July 18, 2001," her opinion is not based on objective findings. In a September 24, 2004 report, she essentially repeated her previous findings. Dr. Xing also indicated that appellant did not have a previous history of groin pain prior to January 20, 2000. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.¹¹

Appellant did not submit any other evidence to support a recurrence of disability beginning July 18, 2001, with objective findings to support that her recurrence which was causally related to the work injury of January 20, 2000. Consequently, she has not met her burden of proof in establishing her claim for a recurrence of disability.

⁸ See *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

⁹ See *John L. Clark*, 32 ECAB 1618 (1981); *Huie Lee Goad*, 1 ECAB 180 (1948).

¹⁰ Furthermore, while Dr. Abdel-Misih's April 16, 2001 report predated the claimed recurrence, he reported no significant findings at that time and released appellant to full duties. This appears consistent with Dr. Beneck's August 13, 2001 report, issued after the beginning of the claimed period of recurrent disability, which noted normal x-ray and MRI scan findings.

¹¹ *John F. Glynn*, 53 ECAB 562 (2002). See also *William A. Archer*, 55 ECAB ____ (Docket No. 04-1138, issued August 27, 2004). Generally, findings on examination are needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurt too much to work without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability beginning July 18, 2001 causally related to the January 20, 2000 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2005 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: August 3, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board