

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

THOMAS C. RANKIN, Appellant

and

**DEPARTMENT OF AGRICULTURE, FOREST
SERVICE, Alpine, CA, Employer**

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**Docket No. 05-1925
Issued: March 6, 2006**

Appearances:
Sally F. LaMacchia, 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 September 16, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated May 27, 2005, finding that he had not established a recurrence of disability on or after July 10, 2002 causally related to his May 11, 2002 injury. 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 is whether appellant sustained a recurrence of disability on or after July 10, 2002 causally related to his May 11, 2002 work-related injury.

FACTUAL HISTORY

This case has been before the Board previously. On November 5, 2003 the Board affirmed the Office's December 5, 2002 decision which denied appellant's claim for a recurrence

of disability beginning on July 10, 2002.¹ The findings of fact and conclusions of law from the prior decisions are hereby incorporated by reference.

After appellant filed his traumatic injury claim on May 11, 2002, the Office accepted his claim for left quadriceps strain and that he could claim disability compensation on Form CA-7.

On November 4, 2004 appellant asserted that his claim included all May 11, 2002 work-related injuries including osteoarthritis, osteopenia, back, bilateral hips and leg pain as well as the previously accepted quadriceps strain. He argued that his employment injury was only later determined to have been more than the accepted quadriceps injury.² Appellant also submitted various health treatment records. A September 10, 2002 magnetic resonance imaging (MRI) scan of the pelvis that revealed bilateral osteoarthritis of the hips, more on the left. In a report dated July 31, 2003, Dr. Debbie Goldring, a treating chiropractor, stated that she saw appellant on July 16, 2003 for limited mobility at L4-5 and L5-S1. She noted subluxations at L4-5, L5-S1 and T11-12 and compressions at L4-5 and L5-S1. Dr. Goldring diagnosed lumbosacral sprain and strain, lumbar myofascitis, sacroiliac sprain and strain and lumbar radiculitis. She stated that appellant had back pain radiating into the right and left extremities since May 15, 2003, but also noted that his nerve root irritation had lessened.

In a report dated February 25, 2004, Dr. Peter B. Hanson, a treating Board-certified orthopedic surgeon, noted appellant's history of injury, with the onset of left groin and thigh pain on or about May 11, 2002, while in the performance of duty. Appellant had a history of left leg pain of varying degrees of intensity since the date of injury. On examination that day, his straight leg raisings were negative, range of motion of the left hip was good and comparable to the right in all areas. Appellant was slightly tender along the trochanteric and adductor tendon and had a minimal decrease in strength in the left adductor compared to the right. There was tenderness along the anterior thigh but his knee, ankle and feet examinations were normal. Dr. Hanson read left hip x-rays as revealing poorly defined subchondral bone, proximal osteopenia and a normal corticoid (sic) bone.

In a report dated March 24, 2004, Dr. Hanson stated that appellant continued to have isolated left hip and thigh pain and received chiropractic treatment. Based on an MRI scan and a negative serologic workup, he diagnosed osteoarthritis, more on the left and recommended a cortisone study.

On April 16, 2004 Dr. Hanson performed a cortisone injection to the left hip. Appellant had no change from prior range of motion examinations and had mild to moderate pain at the endpoints. He noted no pain with compression, no back pain or tenderness and no pain with straight leg raising and no significant findings in the right hip. In a report dated November 4, 2004, he noted by checkmarks on a form that appellant's osteoarthritis was permanent and was accelerated and aggravated by his employment. On November 10, 2004 Dr. Hanson stated that

¹ Docket No. 03-1008 (issued November 5, 2003). On February 6, 2004 the Board issued an order dismissing appellant's petition for reconsideration of Docket No. 03-1008.

² On May 12, 2004 appellant filed a claim for a traumatic injury, stating that on May 11, 2004 he injured his left lower back and middle back while in the performance of duty. Claim No.13 2054415. The record does not include a final Office decision on this claim and it is not before the Board in this appeal.

appellant had full range of motion of the left hip without pain, including compression. Dr. Hanson noted tenderness to palpation of the abductor tendons. X-rays revealed some bilateral changes consistent with early degenerative joint disease. He diagnosed bilateral left hip degenerative joint disease that was made sympathetic as result of a work injury and abductor tendinitis. Dr. Hanson stated that appellant's hip disease preexisted the May 2002 injury. He also noted that osteopenia, which was probably preexisting, did not cause either his osteoarthritis or degenerative joint disease conditions. Dr. Hanson found that appellant had no symptoms of quadriceps strain. He stated that his work duties as a seasonal firefighter accelerated his osteoarthritis and degenerative joint disease.

By decision dated May 27, 2005, the Office denied modification, appellant did not establish a recurrence of disability based on his May 2002 work-related injury.

LEGAL PRECEDENT

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or 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 requirements.³

Office regulations provide 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. 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.⁴

ANALYSIS

The Board finds that appellant has not shown a change in the nature and extent of his work-related injury or of the light-duty requirements.

Appellant failed to submit sufficient medical evidence to show that he cannot perform his light-duty position due to his original employment injury accepted for a left quadriceps strain. In a November 4, 2004 report, Dr. Hanson noted by checking on a form report that appellant's osteoarthritis was permanent and was accelerated and aggravated by his employment. However,

³ *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ 20 C.F.R. § 10.5(x).

this report did not directly address whether he was unable to perform his light-duty position on or after July 10, 2002 as a result of a recurrence of the quadriceps injury. The Board has held that an opinion on causal relationship which consists only of a physician checking a medical form report without further explanation or rationale is of diminished probative value.⁵ In a November 10, 2004 report, Dr. Hanson opined that appellant's May 2002 work-related injury appeared to have exacerbated his osteoarthritis and that his work duties as a seasonal firefighter accelerated his osteoarthritis and degenerative joint disease. He did not specifically address appellant's disability from July 10, 2002 or the May 11, 2002 traumatic injury. This report is speculative⁶ and conclusory⁷ with regard to causal relationship as the physician did not provide medical rationale to support his stated opinion on causal relationship.

Other medical reports submitted by appellant are insufficient to meet his burden of proof as they do not specifically address whether his employment injury was the cause of his disability beginning July 10, 2002.

Appellant submitted a report from Dr. Goldring, his chiropractor. However, she did not address the cause of his diagnosed conditions. Under section 8101(2) of the Federal Employees' Compensation Act "[t]he term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary."⁸ In order for Dr. Goldring to be considered a "physician" under the Act, she must diagnose a subluxation as demonstrated by x-ray. Although she diagnosed spinal subluxations, Dr. Goldring did not address that these findings were based on a review of x-rays. Accordingly, she is not a "physician" under the Act and her report is of no probative medical value.

On appeal, counsel contends that the Office failed to adequately inform appellant regarding the additional evidence needed to submit regarding his claim. However, this argument is without merit as the Board's prior decision clearly explained the reasons why appellant had not met his burden of proof. Furthermore, the Office advised him of the evidence necessary to establish his claim. On July 11, 2002 the Office advised appellant regarding the type of evidence he needed to support his claim for disability.

Counsel contends that the Office shares responsibility in the development of the evidence. This contention is also without merit as a review of the record reveals that the Office advised appellant on July 11, 2002 of the evidence needed to establish his claim. The Office appropriately developed his claim consistent with the information he provided. The inadequacies in the medical evidence submitted have been addressed.

⁵ *Alberta S. Williamson*, 47 ECAB 569 (1996).

⁶ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

⁷ *Albert C. Brown*, 52 ECAB 152 (2000).

⁸ 5 U.S.C. § 8101(2); *Carmen Gould*, 50 ECAB 504 (1999).

Appellant also contends that the Office committed error in its May 27, 2005 decision by adjudicating the matter as a claim for a recurrence of disability. This contention is without merit as appellant filed a claim for a recurrence of disability such that it was appropriate for the Office do develop and adjudicate this aspect of the claim.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability on or after July 10, 2002 causally related to his accepted May 11, 2002 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decision dated May 27, 2005 is affirmed

Issued: March 6, 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