

[and] groin area with burning pain.” In a memorandum dated June 14, 2004, the Office noted that appellant attributed her condition to new factors of employment occurring over more than one work shift. It developed her claim as an occupational disease rather than a recurrence of disability.

By letter dated July 15, 2004, the Office requested additional factual and medical information from appellant regarding her claim. The Office informed her that she should send a copy of her statement regarding the work activities which she believed caused her condition to the employing establishment for verification. The Office also sent a copy of the July 15, 2004 letter to the employing establishment.

In a statement dated May 14, 2004, received by the Office on July 23, 2004, a supervisor with the employing establishment related:

“[Appellant] came back to work full time on January 14, 2003, with no prolonged walking, and no lifting over 8[-] to 10[-pound] limitations.

“We moved [her] to a printer that was in a closer location to her desk/work area in order to reduce any prolonged walking or standing. She was not required to lift heavy objects.”

The supervisor indicated that she was enclosing appellant’s position description and standards; however, these items are not contained in the case record.

In a report dated August 4, 2004, Dr. Richard P. Kaskiw, who is Board-certified in family practice, discussed appellant’s history of an April 3, 2002 employment injury when she tripped on a rug injuring her right groin and hip. He noted that she had returned to work with restrictions on standing, lifting and walking. Dr. Kaskiw related, “[o]n January 22, 2004 [appellant] had an acute exacerbation of her symptoms with severe pain while walking, going up and down stairs and changing directions while walking.” He diagnosed a pulled groin muscle with a neuropathy and chronic weakness and pain of the right groin and hip area. Dr. Kaskiw opined that she was totally disabled.

Appellant submitted a statement, received by the Office on August 13, 2004, in which she described her workload, including the number of times she stood up, walked and sat down during her workday.

By decision dated August 20, 2004, the Office denied appellant’s claim on the grounds that she did not establish the existence of the employment factors to which she attributed her condition. The Office found that she had failed to show that she performed prolonged walking or standing at work.¹

In a statement received by the Office on September 16, 2004, a supervisor at the employing establishment noted that her “original report was misunderstood” and indicated that

¹ The Office further noted that the medical evidence was insufficient to support her claim.

while appellant was moved to a printer closer to her desk, “[w]e were not able to move her closer to copiers/scanner or other office equipment.”

In a report dated June 16, 2005, Dr. Peter A. Freedman, a Board-certified orthopedic surgeon, noted that appellant had “a long history of problems related to right hip pain and also low back pain” and a history of a work injury on April 3, 2002. He stated, “She had an increase of her symptoms in early 2004 when her workload had increased and she was taken out of work on January 22, 2004 and has not been back.” Dr. Freedman diagnosed chronic post-traumatic right groin pain, possible right proximal rectus femoris tendinitis, chronic low back pain with probable sciatica and early degenerative arthritis of the sacroiliac joints.

In a report dated December 9, 2004, Dr. Kaskiw opined that “the increased walking and standing, standing up and sitting down” in appellant’ job aggravated her April 3, 2002 employment injury.

In a report dated May 18, 2005, Dr. Kaskiw noted that appellant experienced “severe burning pain in the right groin and right hip area” while performing activities on January 22, 2004. He diagnosed a right hip groin pull, damaged hip socket, soft tissue damage and pain and stated, “[Appellant] has experienced a pulled groin muscle and neuropathy which was aggravated by increased walking and standing at her workplace, [and] has developed a chronic weakness of the right groin and hip with chronic pain.” Dr. Kaskiw opined that she was unable to perform her usual employment.

On August 3, 2005 appellant, through her representative, requested reconsideration. Counsel contended that appellant’s supervisor did not controvert her allegations that she performed extensive walking and standing in the course of her employment duties.

By decision dated October 28, 2005, the Office denied modification of its August 20, 2004 decision. The Office found that appellant had not established a factual basis for her claim.

LEGAL PRECEDENT

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.²

20 C.F.R. § 10.118(a) states: “The employer is responsible for submitting to [the Office] all relevant and probative factual and medical evidence in its possession, or which it may acquire through investigation or other means. Such evidence may be submitted at any time.”

² See *Claudia A. Dixon*, 47 ECAB 168 (1995); *Willie A. Dean*, 40 ECAB 1208 (1989).

ANALYSIS

The Office denied appellant's claim that she sustained an occupational disease on the grounds that she had not submitted sufficient evidence to establish the factors of employment to which she attributed her condition. Appellant alleged that she sustained pain in her hip and groin area due to "increased walking, twisting and moving and being on [her] feet all day." The Office requested additional information in a letter dated July 15, 2004 and further notified her to send a copy of the implicated factors of employment to the employing establishment for concurrence. A supervisor with the employing establishment submitted a statement which indicated that appellant was moved closer to the printer to reduce walking. In a subsequent statement, she noted that appellant was not moved closer to other office equipment. The supervisor further indicated that she had submitted a position description; however, it is not contained in the case record. On August 13, 2004 appellant submitted a detailed statement describing the extent and duration of her walking and standing per day.

Although it is appellant's burden to establish her claim, the Office is not a disinterested arbiter but, rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.³ In order to properly adjudicate the claim, it is important to secure evidence regarding appellant's actual employment duties. While the employing establishment provided brief statements to the Office, they do not contain the information necessary for a determination of whether appellant has established the occurrence of the claimed employment factors of standing, walking and twisting at work. The employing establishment indicated that it had submitted appellant's position description but it is not contained in the case record. The employing establishment is responsible for submitting the relevant factual and medical evidence in its possession.⁴

On remand, the Office should obtain relevant evidence from the employing establishment regarding appellant's employment duties and the extent of any standing, walking or twisting performed. After such further development as deemed necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

³ See *Claudia A. Dixon*, *supra* note 2.

⁴ 20 C.F.R. § 10.118(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 28, 2005 is set aside and the case is remanded for further action consistent with this opinion.

Issued: May 19, 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