

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

A.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Washington, DC, Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 08-587
Issued: July 8, 2008**

Appearances:
Appellant, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 19, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 26, 2007. The record also contains a decision dated September 19, 2007 finding that she abandoned her request for a hearing. 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 the Office properly determined that appellant's accepted aggravation of hip degenerative arthritis had resolved by November 9, 2005; and (2) whether appellant abandoned her request for a hearing before an Office hearing representative.

FACTUAL HISTORY

On September 9, 2005 appellant, then a 49-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging she sustained an injury to her hips in the performance of duty on August 17, 2005. She indicated that she was moving parcels of heavy books and felt pain in

her hips. Appellant submitted a duty status report (Form CA-17) from Dr. Sagar Nootheti, an orthopedic surgeon, indicating that appellant was disabled for work.

By decision dated December 19, 2005, the Office denied the claim for compensation. It determined that the medical evidence was insufficient to establish the claim. Appellant requested a hearing, which was held on June 27, 2006.

In a report dated June 22, 2006, Dr. Stephen Michaels, an orthopedic surgeon, noted that appellant had a prior work injury in 1996 to her low back and right shoulder.¹ He provided a history of the August 17, 2005 employment incident, noting that appellant had prior complaints of right hip pain and that she had severe degenerative arthritis of both hips. Dr. Michaels reported that the right hip symptoms were worse since the August 17, 2005 incident and the previously asymptomatic left hip had become symptomatic since the incident. He concluded that, while appellant had preexisting degenerative arthritis in the hips, she had sustained a significant exacerbation as a direct result of the August 2005 injury.

By decision dated September 13, 2006, the hearing representative remanded the case for further development. The hearing representative found the report from Dr. Michaels was sufficient to warrant further development of the medical evidence.

The Office referred appellant to Dr. Havinder Pabla, an orthopedic surgeon, for a second opinion examination. By report dated November 2, 2006, Dr. Pabla provided a history and results on examination. He reported the “current diagnosis for the work-related condition on August 17, 2005” was an “inguinal muscle strain, minor soft tissue injury.” Dr. Pabla opined that the degenerative arthritis of the hips was unrelated to the August 17, 2005 incident and there were no residuals of an employment-related injury.

On January 19, 2007 appellant was referred to Dr. Hamid Quraishi, a Board-certified orthopedic surgeon, for a referee examination to resolve a conflict in the medical evidence. In a report dated February 6, 2007, Dr. Quraishi provided a history and results on examination. He stated, “Patient sustained aggravation of the previous injury of short duration not more than 6 to 12 weeks which was not a direct trauma to the hip, it was an indirect trauma.” Dr. Quraishi also indicated that appellant was disabled “anywhere between 6 to 12 weeks” and did not have any current employment-related residuals.

By decision dated March 26, 2007, the Office accepted the claim for aggravation of degenerative arthritis of the hips. The Office stated that the referee physician reported the injury had resolved within 6 to 12 weeks, which “would have been around [November 9, 2005]. Therefore you will not be compensated for any lost time for work beyond that date.”

On April 19, 2007 appellant requested a hearing before an Office hearing representative. By letter dated July 25, 2007, the Office advised appellant that a hearing was scheduled for September 4, 2007 at 11:45 a.m. On August 8, 2007 the Office received a letter from appellant dated July 17, 2007, stating she was told she should file a recurrence of disability claim.

¹ Appellant indicated at the hearing that on August 17, 2005 she was working a light-duty position with lifting restrictions.

In a decision dated September 19, 2007, the Office stated that appellant did not appear for the scheduled hearing and did not contact the Office to explain her failure to appear. It found that appellant had abandoned her request for a hearing.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.²

ANALYSIS -- ISSUE 1

In the March 26, 2007 decision, the Office accepted that appellant sustained an aggravation of degenerative arthritis in both hips on August 17, 2005. At the same time, it found that appellant would not be entitled to compensation for wage loss after November 9, 2005. It is the Office's burden of proof under these circumstances to establish that the disability had resolved as of November 9, 2005.³

The basis for the Office's determination was the February 6, 2007 report from Dr. Quraishi, the referee examiner. Dr. Quraishi, however, failed to provide a rationalized medical opinion on the issue. He opined that the aggravation was of 6 to 12 weeks, without providing any supporting rationale for that opinion. Dr. Quraishi noted there was no direct trauma to the hips, without explaining whether this was the reason he felt the employment injury was of 6 to 12 weeks' duration and, if so, why this supported the opinion. There was no discussion of the medical evidence of record or other medical rationale offered. A referee's opinion is entitled to special weight if it is well rationalized,⁴ but in this case the opinion is not supported by medical rationale. Medical conclusions unsupported by rationale are of diminished probative value.⁵ The Board accordingly finds that the Office did not meet its burden of proof to terminate compensation for wage loss as of November 9, 2005. In view of the Board's finding, the hearing abandonment issue will not be reviewed on this appeal.

CONCLUSION

The opinion of the referee physician that the employment injury had resolved in 6 to 12 weeks was not supported by medical rationale and therefore the Office did not meet its burden of proof to terminate compensation for wage loss as of November 9, 2005.

² *Patricia A. Keller*, 45 ECAB 278 (1993).

³ *See Arthur Sims*, 46 ECAB 880, 886 (1995) (accepting the claim for a specified period of disability does not shift the burden of proof to appellant).

⁴ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

⁵ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996); *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 26, 2007 is reversed.

Issued: July 8, 2008
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