

The initial medical reports diagnosed a left hip contusion, lumbar sprain, bursitis at the ischial tuberosity related to heterotopic bone or old bony fragment. A February 28, 2001 x-ray of the left hip revealed myositis ossificans posterior to the left hip with no evidence of a fracture. A February 28, 2001 x-ray of the lumbar spine revealed no evidence of a fracture. A March 30, 2001 magnetic resonance imaging (MRI) scan of the pelvis revealed no abnormalities but cystic changes on the ovaries. An April 11, 2001 computerized tomography (CT) scan of the pelvis revealed a bone fragment off the left ischium which appears to be an old fracture fragment. An October 1, 2001 electromyography revealed sciatic neuropathy. Appellant came under the treatment of Dr. Sheldon Lebovitz, an osteopath, who diagnosed chronic pain, fragment of the left ischial, calcific deposit in the ischial area compromising the sciatic nerve and sciatic neuropathy. She was also treated by Dr. Robert A. Ruggiero, a Board-certified orthopedic surgeon, for left hip pain that arose after she fell at work. Dr. Ruggiero diagnosed contusion of the left ischium with an underlying calcific deposit or fragment and advised that appellant was totally disabled.

On August 6, 2001 appellant stopped work and filed a claim for a recurrence of disability. The Office subsequently accepted the claimed recurrence of disability.

In a January 7, 2002 report, Dr. Evelyn Witkin, a Board-certified orthopedic surgeon and an Office referral physician, set forth findings on appellant's November 13, 2001 examination. She diagnosed a left hip contusion and lumbosacral strain. Dr. Witkin stated that appellant's myositis ossificans of the left hip was a preexisting condition and noted that appellant had sustained a prior fracture in the hip. She opined that total disability should have ceased in September 2001. Appellant's physical limitations were attributable to a preexisting condition of myositis ossificans, possibly secondary to an old avulsion fracture of the ischium. Dr. Witkin noted that there were no current objective findings of the accepted conditions. She advised that appellant's condition was improved but not completely resolved. Dr. Witkin stated that appellant could return to restricted part-time work and progress to full time as her endurance improved.

Appellant submitted April 29 and July 9, 2004 reports from Dr. Lebovitz, who noted appellant's complaint of persistent left hip pain and diagnosed left ischial fragment and recommended a hip replacement. In an April 29, 2004 attending physician's report, Dr. Lebovitz noted that appellant fell on February 28, 2001 while delivering her mail route. He diagnosed left ischial fragment and noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. Dr. Lebovitz opined that appellant was permanently disabled and required a hip replacement.

On July 19, 2006 the Office requested that appellant submit an updated medical report from her treating physician. It requested that appellant's physician address her diagnosis, whether the diagnosis was causally related to the work injury, periods of disability, physical limitations and if she could be gainfully employed. No additional medical evidence was received.

On July 25, 2006 the Office referred appellant for a second opinion to Dr. Robert A. Smith, a Board-certified orthopedic surgeon, to determine if she had residuals of her work-related condition. In an August 14, 2006 report, Dr. Smith reviewed appellant's history of injury

and medical treatment. He noted findings upon physical examination of normal gait and station, normal spinal examination, no evidence of weakness or deformity of the left hip with satisfactory motion, normal neurological examination with no focal motor or reflex deficit and no focal atrophy. Dr. Smith stated that diagnostic studies of February 29, 2001, the day after appellant's work injury, revealed no evidence of acute fracture or dislocation of the hip or back and preexisting myositis/fracture fragment from the ischial tuberosity. He diagnosed left hip contusion and lumbosacral sprain and strain which were causally related to the employment injury and preexisting myositis/fracture fragment of the left ischial tuberosity unrelated to her work injury. Dr. Smith addressed the benign nature of the examination, finding no evidence of any aggravation, acceleration, precipitation or direct cause of her preexisting myositis or left ischial tuberosity caused by the accepted injury. He further noted that there was no apparent objective pathology regarding the sciatic nerve, the hip or the back. Dr. Smith found that appellant had no residuals from the February 28, 2001 work injury and would require no further treatment. He opined that appellant could return to full duty without restrictions.

On January 22, 2007 the Office issued a notice of proposed termination of compensation and medical benefits on the grounds that Dr. Smith's report established no residuals of the work-related employment conditions.

On January 29, 2007 appellant asserted that she continued to have residuals of her accepted condition. Although the Office had authorized left hip replacement surgery she had declined the procedure and continued to have residuals of her work injury.

By decision dated March 2, 2007, the Office terminated appellant's compensation benefits effective March 18, 2007, finding that the weight of the medical evidence established that she had no continuing disability resulting from her accepted injury.

In a letter dated March 12, 2007, appellant requested an oral hearing which was held on July 17, 2007. She submitted a March 7, 2007 CT scan of the pelvis, which revealed findings compatible with a prior avulsion injury at the insertion site of the left hamstring tendons with callus formation with possible impingement on the left sciatic nerve. A bone density scan dated March 7, 2007 revealed evidence of osteopenia. Appellant underwent an MRI scan of the lumbar spine on March 26, 2007, which revealed minimal degenerative changes of the lumbar spine without evidence of any disc herniation or spinal stenosis. In an April 2, 2007 report, Dr. David G. Nazarian, a Board-certified orthopedic surgeon, noted that appellant was status post injury to her left side with persistent discomfort in her lower extremity. Upon physical examination, he noted a full range of passive hip motion in both legs including rotation, abduction and adduction without pain and left trochanteric tenderness. Dr. Nazarian reviewed an x-ray diagnosis of avulsion fragment from the left ischial tuberosity and diagnosed sciatic nerve symptoms from a prior trauma. He noted that, since appellant had a full range of motion of the left hip and an essentially normal hip joint, she could undergo a neurological evaluation.

By decision dated September 26, 2007, the hearing representative affirmed the March 2, 2007 decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.² The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.³

ANALYSIS

The Office accepted appellant's claim for left hip contusion, lumbosacral strain/sprain and progressive myositis ossificans. It authorized a left hip replacement which appellant declined to undergo. As the Office did not receive a response from appellant to its request for an updated medical report, it further developed the medical evidence.

On July 25, 2006 the Office referred appellant to Dr. Smith, for a second opinion evaluation. On August 14, 2006 Dr. Smith noted an essentially normal physical examination, normal gait and station, normal spinal examination, no evidence of weakness or deformity of the left hip with satisfactory motion, normal neurological examination with no focal motor or reflex deficit and no focal atrophy. He indicated that there were no objective findings to support that appellant had residuals of the accepted work-related conditions. Dr. Smith diagnosed left hip contusion and lumbosacral sprain and strain which were causally related to the employment injury. He noted that appellant had preexisting myositis/fracture fragment of the left ischial tuberosity unrelated to her work injury. Given the benign nature of the examination, there was no evidence of any aggravation, acceleration, precipitation of the myositis/fracture fragment from the left ischial tuberosity due to the February 28, 2001 injury. Dr. Smith further noted that there was no apparent objective pathology regarding the sciatic nerve, the hip or the back. He concluded that appellant had no residuals from the February 28, 2001 work injury and did not require further treatment. Dr. Smith advised that she could return to full duty without restrictions.

The Board finds that weight of the medical evidence clearly establishes that appellant's work-related conditions have resolved. Dr. Smith found that appellant did not have any residuals of a left hip contusion, lumbosacral strain/sprain or progressive myositis ossificans and that she could return to her regular duties. He noted the preexisting nature of her left hip condition but advised that her injury did not cause any aggravation or acceleration of this condition. There is no contemporaneous medical evidence supporting that appellant has continuing disability or

¹ *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

² *Mary A. Lowe*, 52 ECAB 223 (2001).

³ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

residuals of her accepted condition. For these reasons, the Office met its burden of proof in terminating appellant's benefits for her accepted conditions.

On appeal, appellant contends that the statement of accepted facts sent to Dr. Smith was inaccurate and deficient. She noted that it did not include a prior left shoulder injury and surgery, that the Office approved a left hip replacement which was not performed, that the Office accepted a permanent aggravation of a left hip condition and failed to provide a proper history of treatment. The Board has reviewed Dr. Smith's report and cannot fault it on the basis of a deficient factual background. Dr. Smith reviewed appellant's history and addressed her accepted injury of February 28, 2001 and each of the accepted conditions of left hip contusion, lumbosacral strain/sprain and progressive myositis ossificans. He provided findings on examination of each of these areas and reviewed the diagnostic testing. Although the Office authorized left hip replacement surgery, it did not accept that appellant sustained a permanent aggravation of her preexisting left hip condition. Moreover, Dr. Smith advised that her accepted injury had not aggravated or accelerated her left hip condition. Therefore, the Board finds this argument to be without merit.

Appellant also asserts on appeal that there is a conflict in medical opinion between Dr. Smith and Drs. Witkin, Ruggiero and Nazarian. The Board does not agree that Dr. Witkin was an Office referral physician⁴ and her 2002 report predates the period in which the Office sought to terminate benefits. While her report did not preclude residuals existing in 2002, she indicated that there were no objective findings supporting continuation of the accepted conditions. The reports of Dr. Ruggiero also predate the termination of benefits and do not otherwise provide medical rationale supporting a continuing employment-related condition.⁵ While Dr. Nazarian's April 2, 2007 report is more contemporaneous with the termination of benefits, he did not address how any continuing condition is attributable to the February 28, 2001 employment injury.⁶ Consequently, these reports are not sufficient to create a medical conflict with the report of Dr. Smith.

⁴ *See id.* This section provides that a conflict must arise between a physician for the claimant and a physician for the United States. Thus, there may not be a medical conflict requiring referral to an impartial specialist under section 8123(a) where the conflict is between two physicians for the Office.

⁵ *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁶ *See K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

CONCLUSION

The Board finds that the Office has met its burden of proof to terminate appellant's benefits effective March 18, 2007.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 26 and March 2, 2007 are affirmed.

Issued: November 25, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board