

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

L.G., Appellant)

and)

NATIONAL ARCHIVES & RECORDS)
ADMINISTRATION, FEDERAL RECORDS)
CENTER, Denver, CO, Employer)

**Docket No. 08-2343
Issued: September 28, 2009**

Appearances:
John S. Evangelisti, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 26, 2008 appellant filed a timely appeal from a May 21, 2008 decision of the Office of Workers' Compensation Programs that denied her claim. 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 appellant met her burden of proof to establish that she has bilateral avascular necrosis, degenerative disc disease, chronic low back pain syndrome, chronic failed back syndrome and spinal stenosis caused by the March 31, 1983 employment injury; and (2) whether she sustained a recurrence of disability on February 23, 2007.

On appeal appellant's attorney argues that she has established additional employment-related conditions and that her accepted condition has worsened.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated February 4, 2008, the Board found that the Office properly denied appellant's February 22, 2007 reconsideration request on the grounds that it was untimely filed and failed to demonstrate clear evidence of error.¹ The law and the facts of the previous Board decision are incorporated herein by reference.

Concurrently with the February 22, 2007 request for reconsideration, on September 12, 2007 appellant, through her attorney, requested that appellant's claim be expanded to include herniated discs at L4-5 and L5-S1, bilateral avascular necrosis of the femoral heads, chronic low back pain syndrome, degenerative disc disease, chronic failed back syndrome and spinal stenosis.² On November 1, 2007 she filed a Form CA-2a, notice of recurrence, stating that she sustained a recurrence of disability on February 23, 2007.³ By letters dated November 21, 2007 and March 19, 2008, the Office advised appellant of the evidence needed to support her claim for additional conditions. It requested a physician's report containing a rationalized medical opinion on the causal relationship of the claimed conditions and the work injury.

Appellant submitted a number of medical reports dating from 1983 to 2007 including operative reports dated December 15, 1983, and August 14, 1985, in which Dr. Thomas K. Craigmile, a Board-certified neurosurgeon, performed lumbar laminectomy procedures. In reports dated December 4, 1985, Dr. Craigmile noted that appellant had made a good recovery from her August 1985 surgery and that the principle cause of any disability was the ischemic necrosis of the right femoral head. He noted examination findings of good range of motion of the lumbar spine and negative straight leg raising with excellent return of L5 motor and sensory function. On January 17 and 22, 1986 Dr. Craigmile reported that there was no evidence of any continuing nerve root involvement of the lower spine and advised that appellant did not need further neurosurgical treatment.

In a second opinion evaluation dated January 22, 1986, Dr. A.C. Sudan, Jr., Board-certified in orthopedic surgery, provided findings on examination and advised that appellant continued to have residuals of the employment injury, in spite of undergoing competent surgery. He further noted that she had developed degenerative arthritis of the hip, had significant physical limitations and was not employable.

By report dated January 27, 1986, Dr. Theodore C. Hunt, a Board-certified orthopedic surgeon, reported the history of injury and that appellant had contributory hip problems. He stated that she had a 12 percent permanent impairment of the whole person. On April 23, 1986 Dr. Hunt diagnosed bilateral avascular necrosis of the femoral heads, advising that he could not

¹ Docket No. 07-1779 (issued February 4, 2008). By decision dated October 17, 2000, the Office terminated appellant's compensation benefits, effective November 4, 2000, based on the second opinion evaluation of Dr. Richard Talbott, Board-certified in orthopedic surgery.

² The accepted conditions are low back and neck strain and aggravated herniated nucleus pulposus.

³ The claim form contains no information from the employing establishment.

definitely relate the condition to the employment injury but that the hip pain exacerbated her back pain.

In an April 14, 1986 report, Dr. Charles F. Rowland, a Board-certified orthopedist who provided an impartial evaluation for the Office, noted his review of the record and findings on physical examination. He diagnosed bilateral idiopathic avascular necrosis of the femoral heads and stated that, although she sustained a lumbosacral strain at work on March 31, 1983, it was apparent through retrospective analysis, including that she showed minimal improvement following her two laminectomy procedures, that hip pain was a component of her complaints from the very beginning. Dr. Rowland advised that the etiology of bilateral avascular necrosis was unknown and that, while appellant was totally disabled from the condition, it was not related to employment factors.⁴

By report dated March 11, 1988, Dr. Daniel Brugioni, an Office referral physician Board-certified in orthopedic surgery, advised that appellant's disabling low back, hip and leg pain had two origins, chronic low back pain syndrome and bilateral avascular necrosis of the femoral heads, and that there was no causal relationship between the two. In a February 17, 1989 report, Dr. Jeffrey Hrutkay, a Board-certified orthopedic surgeon, provided examination findings and diagnosed failed back syndrome. Dr. Thomas E. Curran, Board-certified in orthopedic surgery, provided a second opinion evaluation dated February 24, 1994 in which he advised that appellant's clinical picture had not changed in recent years with continued work-related disability, noting that there could be an element of symptom magnification. He diagnosed chronic failed back syndrome, degenerative changes in her lumbar spine and magnetic resonance imaging (MRI) scan evidence of spinal stenosis, opining that these were residuals of the 1983 employment injury and subsequent surgeries.

In a July 25, 2000 report, Dr. Richard Talbott, a Board-certified orthopedist and Office referral physician, noted the history of injury, his review of the medical record, and provided findings on physical examination. He noted that appellant had not sought medical care for a number of years, and diagnosed postoperative laminectomy times two of the lumbar spine and probable degenerative joint disease involving both hips. Dr. Talbott opined that appellant understated her ability to perform physical activities and that, while she had some subjective residual disability of the low back and could not perform her date-of-injury job, this was based on her subjective complaints rather than objective findings. He advised that she could work eight hours daily with a 20-pound lifting restriction. On August 8, 2000 Dr. Talbott advised that appellant had no objective findings on examination and that, from an objective standpoint, she had no disabling residuals.

Dr. John A. Odom, Jr., Board-certified in orthopedic surgery, provided treatment notes dated July 1 to September 12, 2001 in which he provided examination findings. He diagnosed degenerative disc disease and osteoarthritis of the lumbar spine at L4-5 and L5-S1 and apparent aseptic necrosis of the left femoral head. A July 5, 2001 MRI scan of the lumbar spine revealed the previous surgery and minimal disc bulging at L4-5. An August 31, 2001 discogram with

⁴ The Office determined that a conflict in medical evidence had been created between appellant's attending physicians and the Office medical adviser regarding whether necrosis of the hips was related to the employment injury or subsequent surgeries.

post-discogram computerized tomography (CT) scan demonstrated disc bulges and degenerative changes from L3 to S1. A March 8, 2007 lumbar spine MRI scan revealed disc bulges at L3-4 and L4-5 with degenerative facet changes.

In an April 4, 2007 report, Dr. Christopher B. Ryan, a Board-certified physiatrist, noted his review of medical evidence and provided findings on physical examination. He diagnosed failed back syndrome with ongoing low back pain, and bilateral hip avascular necrosis, status post left-sided hip replacement. Dr. Ryan advised that appellant continued to be disabled from her “work-related condition,” noting that she had MRI scan findings of degenerative abnormalities which had changed since 2000. He concluded that “she has suffered a worsening of her conditions due to a natural progression of these conditions which began with her on-the-job injury.”

By decision dated May 21, 2008, the Office denied appellant’s recurrence claim. It also found that she did not sustain any additional conditions caused by the March 31, 1983 employment injury.⁵ It noted that, in an August 18, 1986 decision, her claim for bilateral avascular necrosis was denied.

LEGAL PRECEDENT -- ISSUE 1

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of claimant’s own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is

⁵ The Office issued a second decision on May 21, 2008 denying appellant’s request for reconsideration. Appellant did not appeal this decision with the Board.

⁶ *D.G.*, 59 ECAB ____ (Docket No. 08-1139, issued September 24, 2008).

⁷ *Id.*

⁸ *Roy L. Humphrey*, 57 ECAB 238 (2005).

compensable if it is the direct and natural result of a compensable primary injury.⁹ A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden the claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.¹⁰

Section 8123(a) of the Federal Employees' Compensation Act¹¹ provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹² When the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹³

ANALYSIS -- ISSUE 1

The accepted conditions in this case are low back and neck strain and aggravated herniated nucleus pulposus. Appellant claims that additional conditions of bilateral avascular necrosis, chronic low back pain syndrome, degenerative disc disease, chronic failed back syndrome, and spinal stenosis be accepted as caused by the March 31, 1983 lifting incident.

Regarding the bilateral avascular necrosis condition, in February 1986, the Office determined that a conflict in medical evidence had been created regarding whether the condition was caused by the March 31, 1983 employment injury and subsequent surgeries. It referred appellant to Dr. Rowland for an impartial evaluation. In a comprehensive April 14, 1986 report, Dr. Rowland noted the history of injury, his review of the medical record, reported physical findings and diagnosed bilateral idiopathic avascular necrosis of the femoral heads. He advised that the etiology of the bilateral avascular necrosis was unknown but was unrelated to employment factors. Dr. Rowland provided a comprehensive, well-rationalized evaluation regarding appellant's bilateral avascular necrosis condition. He clearly found that the condition was not employment related and his report is entitled to the special weight accorded an impartial examiner. At that time, it constituted the weight of the medical evidence regarding the cause of this condition.¹⁴

The evidence submitted subsequent to Dr. Rowland's report regarding avascular necrosis includes Dr. Brugioni's March 11, 1988 report, in which he advised that there was no causal relationship between appellant's chronic low back pain and the avascular necrosis of the femoral heads. Dr. Odom noted apparent avascular necrosis of the femoral heads, and Dr. Ryan merely diagnosed bilateral hip avascular necrosis and advised that appellant continued to be disabled

⁹ Larson, *The Law of Workers' Compensation* § 1300; see *Charles W. Downey*, 54 ECAB 421 (2003).

¹⁰ *J.J.*, 60 ECAB ____ (Docket No. 09-27, issued February 10, 2009).

¹¹ 5 U.S.C. §§ 8101-8193.

¹² 5 U.S.C. § 8123(a); see *Geraldine Foster*, 54 ECAB 435 (2003).

¹³ *Manuel Gill*, 52 ECAB 282 (2001).

¹⁴ See *Sharyn D. Bannick*, 54 ECAB 537 (2003).

from work-related conditions. To establish entitlement to workers' compensation benefits, a claimant must submit an affirmative opinion on causal relationship from a physician who supports the opinion with sound medical reasoning.¹⁵ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹⁶ A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁷ The Board finds the reports of Drs. Brugioni, Odom and Ryan insufficient to meet appellant's burden of proof as none of the physicians provided a clear opinion that the diagnosed avascular necrosis was caused by the March 31, 1983 employment injury or to create a new conflict in medical evidence.¹⁸ Appellant therefore did not establish that this condition was work related.

Regarding the remaining claimed conditions of chronic low back pain syndrome, degenerative disc disease, chronic failed back syndrome and spinal stenosis, the Board finds that appellant has not submitted sufficient rationalized medical opinion evidence that supports a causal connection between these conditions and the 1983 employment injury. The objective studies of record include July 5, 2001 and March 8, 2007 MRI scans of the lumbar spine, and an August 31, 2001 discogram with postdiscogram CT scan, that demonstrated disc bulges and degenerative changes from L3 to S1. The studies, however, do not provide an opinion regarding the cause of the diagnosed conditions, and 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.¹⁹ Likewise, in February 1990, Dr. Hrutkay advised that appellant had failed back syndrome, and Dr. Odom provided treatment notes dated July 2 and 12 and September 12, 2001 in which he noted that appellant had previous back surgery in 1983 and 1985 provided examination findings and diagnosed degenerative disc disease and osteoarthritis of the lumbar spine at L4-5 and L5-S1. Neither physician, however, provided a cause of the diagnosed condition, and are therefore insufficient to meet appellant's burden of proof.²⁰

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to his federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.²¹

¹⁵ *E.A.*, 58 ECAB ____ (Docket No. 07-1145, issued September 7, 2007).

¹⁶ *C.B.*, 60 ECAB ____ (Docket No. 08-1583, issued December 9, 2008).

¹⁷ *T.M.*, 60 ECAB ____ (Docket No. 08-975, issued February 6, 2009).

¹⁸ *See I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008).

¹⁹ *Willie M. Miller*, 53 ECAB 697 (2002).

²⁰ *Id.*

²¹ *A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006).

In reports dated December 4, 1985, Dr. Craigmile, an attending neurosurgeon, noted that appellant had made a good recovery from her August 1985 surgery and that the principle cause of any disability was the ischemic necrosis of the right femoral head. He noted examination findings of good range of motion of the lumbar spine and negative straight leg raising with excellent return of L5 motor and sensory function. On January 17 and 22, 1986 Dr. Craigmile reported that there was no evidence of any continuing nerve root involvement of the lower spine and advised that appellant did not need further neurosurgical treatment. In his April 14, 1986 report, Dr. Rowland noted that appellant sustained a lumbar strain on March 31, 1983 and that she was disabled due to the avascular necrosis of the femoral heads, not her back condition. Their reports are therefore insufficient to establish that appellant had additional back conditions caused by the March 31, 1983 employment injury or that her accepted conditions had worsened.²²

Dr. Sudan advised in a January 22, 1986 report that the 1983 injury “produced a disc injury from which she has not recovered in spite of competent surgery,” and in his March 11, 1988 report, Dr. Brugioni advised that appellant’s disabling low back, hip and leg pain had two origins, chronic low back pain syndrome and bilateral avascular necrosis of the femoral heads. Dr. Sudan did not diagnose a specific new back condition, and while Dr. Brugioni diagnosed chronic back pain, a diagnosis of “pain” does not constitute the basis for the payment of compensation.²³ In a February 24, 1994 report, Dr. Curran advised that appellant’s clinical picture had not changed in recent years with continued work-related disability, noting that there could be an element of symptom magnification. While he diagnosed chronic failed back syndrome, degenerative changes in her lumbar spine and MRI scan evidence of spinal stenosis, opining that these were residuals of the 1983, the Board finds that he did not explain with sufficient rationale how these conditions were causally related to the March 31, 1983 employment injury.²⁴

The record does not contain evidence that appellant sought further medical care from 1994 until July 2000 when she was referred to Dr. Talbott for a second opinion evaluation. Dr. Talbott diagnosed postoperative laminectomy times two of the lumbar spine and probable degenerative joint disease involving both hips, and opined that appellant understated her ability to perform physical activities. He advised that, while she had some subjective residual disability of the low back and could not perform her date-of-injury job, this was based on her subjective complaints rather than objective findings and reiterated on August 8, 2000 that appellant had no objective findings on examination and that, from an objective standpoint, appellant had no disabling residuals.

In his April 4, 2007 report, Dr. Ryan advised that appellant continued to be disabled from her “work-related condition” and diagnosed bilateral hip avascular necrosis and ongoing low back pain, noting that she had MRI scan findings of degenerative abnormalities which had changed since 2000. He concluded that “she has suffered a worsening of her conditions due to a

²² *Id.*

²³ *Robert Broome*, 55 ECAB 339 (2004).

²⁴ *D.G.*, *supra* note 6.

natural progression of these conditions which began with her on-the-job injury.” Dr. Ryan, however, did not exhibit awareness that the avascular necrosis of the femoral heads was not accepted as employment related or provide a rationalized explanation regarding how a 1983 lifting injury caused the diagnosed conditions in 2007, 24 years after the employment injury. A medical opinion must be based on a complete factual and medical background with an accurate history of the claimant’s employment injury, and must explain from a medical perspective how the current condition is related to the injury,²⁵ and as stated earlier, a diagnosis of pain does not constitute the basis for the payment of compensation.²⁶ Dr. Ryan’s report is therefore insufficient to meet appellant’s burden to establish that her current back condition was causal relationship to the employment injury.

None of the physicians listed above provided a sufficiently rationalized explanation to show that the newly claimed back conditions were a direct and natural result of the March 31, 1983 employment injury or that the accepted conditions of low back and neck strain and aggravated nucleus pulposus had worsened. The Board finds that appellant failed to provide rationalized medical evidence establishing that she sustained additional conditions caused by the March 31, 1983 employment injury.²⁷

LEGAL PRECEDENT -- ISSUE 2

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.”²⁸ A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish 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 supports that conclusion with sound medical reasoning.²⁹ Where no such rationale is present, medical evidence is of diminished probative value.³⁰ To establish that a claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between the present condition and the accepted injury must support the physician’s conclusion of a causal relationship.³¹

²⁵ *K.E.*, 60 ECAB ____ (Docket No. 08-1461, issued December 17, 2008).

²⁶ *Robert Broome*, *supra* note 23.

²⁷ *T.H.*, 59 ECAB ____ (Docket No. 07-2300, issued March 7, 2008).

²⁸ 20 C.F.R. § 10.5(x); *R.S.*, 58 ECAB __ (Docket No. 06-1346, issued February 16, 2007).

²⁹ *I.J.*, *supra* note 18; *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

³⁰ *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

³¹ *C.W.*, 60 ECAB ____ (Docket No. 07-1816, issued January 16, 2009).

ANALYSIS -- ISSUE 2

Appellant filed a recurrence claim on November 1, 2007, alleging that she sustained a recurrence of disability on February 23, 2007. The medical evidence relevant to the claimed recurrence includes Dr. Ryan's April 4, 2007 report. While in this report, Dr. Ryan advised that appellant was totally disabled due to the March 31, 1983 employment injury, as discussed above, he merely stated that appellant continued to be disabled from her "work-related condition," noting that she had MRI scan findings of degenerative abnormalities which had changed since 2000. He concluded that "she has suffered a worsening of her conditions due to a natural progression of these conditions which began with her on-the-job injury."

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 resulting from a previous injury or illness without a new or intervening injury. To establish that a claimed recurrence of a condition was caused by the accepted injury, medical evidence of bridging symptoms between the present condition and the accepted injury must support the physician's conclusion of causal relationship.³² In this case, there is an absence of medical reports between 1994 and 2000 and between 2001 and 2007. Furthermore, Dr. Ryan did not provide a rationalized explanation as to how the 1983 employment injury caused her to become totally disabled in 2007.³³

As appellant submitted no medical evidence that established a spontaneous change in her medical condition in February 2007 resulting from the accepted injuries, she did not meet her burden of proof to establish that she sustained a recurrence of disability.³⁴

CONCLUSION

The Board finds that appellant did not establish that her degenerative disc disease, chronic low back pain syndrome, chronic failed back syndrome and spinal stenosis was caused by or was a consequence of the March 31, 1983 employment injury and that she did not sustain a recurrence of disability on February 23, 2007.

³² *Id.*

³³ *I.J.*, *supra* note 18.

³⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 28, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board