United States Department of Labor
Employees' Compensation Appeals Board

K.A., Appellant **and** **DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Mountlake Terrace, WA, Employer**	)	**Docket No. 09-1686** **Issued: April 9, 2010**

Appearances:
Norman R. McNulty, Jr., Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 15, 2009 appellant, through her attorney, filed a timely appeal of an April 16, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a recurrence of a medical condition on July 24, 2005 causally related to her July 2, 1998 employment injury.

FACTUAL HISTORY

On July 2, 1998 appellant, then a 46-year-old realty specialist, sustained injury to her hips when taking a Fire Fitness Pack test. She was required to walk three miles within 45 minutes carrying a 45-pound pack during a test that was classified as arduous. The Office accepted appellant's claim for bursitis of the right hip on January 14, 2000. Appellant underwent physical

therapy and cortisone injections for pain. The record indicates that her case file was closed in 2003.

Appellant filed a recurrence of disability claim on March 15, 2005, noting that she did not stop work and that her claim was for medical treatment only. She stated that her right hip condition had persisted since the July 2, 1998 injury and described her course of treatment in 2000 and 2001, x-rays in 2004 and additional physical therapy in 2005. Appellant submitted a November 24, 1999 report from Dr. Michael Dillard, an attending Board-certified family practitioner, who diagnosed bursitis and tendinitis.

The Office requested additional factual and medical evidence by letter dated October 3, 2005. On October 31, 2005 appellant described her symptoms of pain while sitting and driving as well as pressure against the right bursa when walking. She stated that she was unable to walk more than a few blocks without developing pain. Appellant noted that Dr. Dillard had advised her that her condition should heal with time. She continued to see Dr. Dillard until 2004 when she sought treatment with Dr. Julie Moran, a Board-certified family practitioner. Appellant resubmitted a September 9, 1999 x-ray report which was reported within normal limits. Dr. Moran first examined appellant on October 5, 2004 and noted her concern regarding bursitis in the right hip.

On April 4, 2005 Dr. Moran stated that appellant had improved with physical therapy but continued to exhibit significant lumbosacral core weakness. Appellant underwent a right hip magnetic resonance imaging (MRI) scan on September 20, 2005 which did not demonstrate any abnormal joint effusion in hip joint, cysts, osteophytes or erosions. Hip x-rays of September 20, 2005 were reported as unremarkable. Dr. Moran reviewed appellant's diagnostic studies on September 28, 2005 and found no pathology on x-ray and increased signal intensity in the hamstring bilaterally.

By decision dated March 9, 2006, the Office denied appellant's claim for recurrence of disability.

Appellant requested an oral hearing on March 30, 2006 which was held on August 28, 2006.

Dr. Eric J. Bowton, a Board-certified orthopedic surgeon, examined appellant on May 3, 2006 and noted her history of injury in 1998 during the fitness test and medical history. Dr. Michael D. Kirsch, a Board-certified radiologist, recommended a gadolinium arthrogram on May 15, 2006. On June 7, 2006 appellant underwent an arthrogram of the right hip which revealed an anterior-superior acetabular labral tear and degeneration. Dr. Russell S. VanderWilde, a Board-certified orthopedic surgeon, examined appellant on July 18, 2006 and noted her history of injury. He reviewed the arthrogram showing an anterosuperior labral tear and advised that appellant received complete pain relief from an interarticular injection. On July 31, 2006 Dr. VanderWilde performed a right hip arthroscopy with labral debridement and debridement of the femoral head. He diagnosed right hip chronic degenerative unrepairable anterior labral tear, chronic degenerative posterior labral tear and mild chondromalacia of the femoral head.

On September 11, 2006 Dr. Dillard stated that there was no question that appellant's right hip pain was caused by the labral tears as demonstrated by the gadolinium arthrogram.

In a November 14, 2006 decision, the Office hearing representative affirmed the March 9, 2006 decision finding that appellant had not submitted sufficient medical opinion evidence to establish a causal relationship between her right hip condition and her accepted employment injury.

Appellant requested reconsideration on November 1, 2007. In a note dated August 14, 2007, Dr. VanderWilde stated that it was "more likely than not" that appellant's right hip labral tear was related to the 1998 fitness test. In a note dated December 14, 2006, he stated, "I think it is pretty clear that [appellant's] injury occurred as a work injury and that her subsequent requirement for arthroscopic debridement of the labrum of the right hip is related on a more likely than not basis to her industrial injury of record." Dr. VanderWilde noted that the delay in diagnosing a labral tear was not uncommon given the changing diagnostic techniques.

In a decision dated February 11, 2008, the Office denied modification of its prior decision. It found that Dr. VanderWilde failed to provide the sufficient medical rationale to support his opinion on causal relationship.

On February 6, 2009 appellant, through her attorney, requested reconsideration. She contended that the accepted condition of bursitis was the result of the tearing of the cartilage on the rim of the acetabulum, but that due to advances in diagnostic techniques, this relationship could only recently be appreciated.

In a January 15, 2009 report, Dr. John W. Ellis, a Board-certified family practitioner, described appellant's July 2, 1998 employment injury of walking three miles with a 45-pound pack which resulted in the accepted condition of right hip bursitis. He reviewed appellant's history of medical treatment including the June 7, 2006 arthrogram. Dr. Ellis opined that the three-mile walk carrying the pack in 1998 caused actual tearing of the internal structures of the right hip as well as bilateral bursitis. He noted that an MRI scan was not accurate in diagnosing a labral tear. Dr. Ellis stated, "The injury to the anterior labrum and soft tissue structures of the right hip occurred with the initial injury of July 2, 1998. As the fraying continued, there would be less cushioning causing chondromalacia of the right femoral head and event further injury and degeneration of the labral tear." Dr. Ellis noted that appellant tried to remain as active as possible and continued "to perform activities of daily living plus the strenuous activity in the U.S. Forest Service; she continued to aggravate the tear in her right hip." He advised that the tear caused reflex spasms of the muscles and ligaments in the right groin which, in turn, caused tendinitis and inflammation in the iliotibial tract on the right side.

By decision dated April 16, 2009, the Office denied modification of its prior decision.

On appeal appellant's attorney contends that the medical evidence is sufficient to require additional development on whether appellant's labral tear and resulting surgery were due to her accepted employment injury.

LEGAL PRECEDENT

Under Title 20, Code of Federal Regulations a recurrence condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition of injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment.[1]

When an appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician, who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports this conclusion with sound medical reasoning.[2]

ANALYSIS

The record establishes that appellant undertook a three-mile timed walk carrying a 45-pound backpack on July 2, 1998. Appellant filed a claim for bilateral hip pain which the Office accepted for bursitis of the right hip. She sought intermittent medical treatment for her right hip prior to her 2005 claim for a recurrence of a medical condition. Appellant did not stop work, noting that she was seeking additional medical treatment of her right hip.

Appellant underwent an arthrogram of the right hip on June 7, 2006 which revealed anterior-superior labral tears and degeneration. Dr. VanderWilde, a Board-certified orthopedic surgeon, performed a right hip arthroscopy with labral debridement on July 31, 2006 and diagnosed right hip chronic degenerative unrepairable anterior labral tear, chronic degenerative posterior labral tear and mild chondromalacia of the femoral head. Following surgery, Dr. VanderWilde submitted treatment notes dated December 14, 2006 and August 14, 2007 in which he opined that appellant's current right hip condition was "more likely than not" due to her accepted employment injury.

The Board finds that the treatment notes from Dr. VanderWilde are not sufficient to establish that appellant's 2006 right hip labral tear or need for surgery were due to her 1998 injury accepted for bursitis. In this regard, the Board has previously held that, when diagnostic testing is delayed, uncertainty mounts regarding the cause of the diagnosed condition and a question arises as to whether that testing in fact documents the injury claimed by the employee.[3] The greater the delay in testing the greater the likelihood that an event not related to employment has caused or worsened the condition for which the employee seeks compensation. When the delay becomes so significant that it calls into question the validity of an affirmative opinion

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[1] 20 C.F.R. § 10.5(y).

[2] *Ricky S. Storms*, 52 ECAB 349 351-52 (2001).

[3] *Linda L. Mendenhall*, 41 ECAB 532 (1990).

based at least in part on the testing, such delay diminishes the probative value of the opinion offered.[4] In this regard, Dr. VanderWilde did not provide sufficient medical rationale to support his opinion on causal relationship. He did not provide a review of the contemporaneous medical records related to appellant's treatment following the 1998 injury and treatment for bursitis. Although Dr. VanderWilde stated that "the delay in diagnosis is not uncommon with labral pathology's sophistication in diagnostic techniques and treatment is evolving," he speculated that causal relationship to the accepted injury was based on a more likely than not basis.[5] There is no explanation from the attending surgeon addressing how the nature of the labral tears found or other degenerative changes found on arthroscopy lead to his conclusion relating them to the July 2, 1998 injury. Dr. VanderWilde did not provide a sufficient medical explanation of how or why the nature of appellant's walk resulted in tears to the labrum of her hip.

On January 15, 2009 Dr. Ellis, a Board-certified family practitioner, reviewed a history of appellant's July 2, 1998 employment injury and medical treatment. He contrasted the MRI scan obtained in September 2005 with that obtained in June 2006, noting the negative or unremarkable findings of the earlier diagnostic studies. Dr. Ellis stated that the 2006 MRI scan showed findings consistent with a labral tear and degeneration throughout the anterior superior labrum as well. He did not address how these findings could be related to the July 2, 1998 incident in light of the prior negative study of 2005. Rather, Dr. Ellis noted only that the MRI scan studies were not an arthrogram and were not going to be very accurate in diagnosing a labral tear as was found at surgery. This does not explain, however, why the 2006 study revealed such a tear while the 2005 study did not. In addressing causal relationship, Dr. Ellis stated that the three-mile walk while carrying a pack in 1998 caused actual tearing of the internal structures of the right hip and caused bilateral bursitis. He noted that appellant's subsequent strenuous work activities continued to aggravate the tear in her right hip, which caused traumatic arthritis and chondromalacia as found at surgery. To this extent, Dr. Ellis generally support causal relationship not as a spontaneous recurrence of appellant's medical condition but as an aggravation of her right hip condition following the accepted employment injury due to additional work activities.[6] While he explained how the tear in appellant's labrum resulted in the chondromalacia of her right femoral head, he did not offer comparable medical reasoning explaining how or why the accepted employment activity caused the initial tears. Without such clear and detailed medical rationale, appellant has not submitted sufficient medical opinion evidence to establish that her accepted injury caused a recurrence of her medical condition necessitating treatment or surgery.

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[4] *Id*.

[5] A physician's opinion on causal relationship must be based on a complete and accurate factual and medical background and expressed in terms of reasonable medical certainty. *See Steven S. Saleh*, 55 ECAB 169 (2003). Medical opinions that are speculative or equivocal are of reduced probative value. *See Michael R. Shaffer*, 55 ECAB 386 (2004).

[6] To this extent, the Board's present decision pertains to appellant's claim as a recurrence of a medical condition. This decision does not preclude appellant from pursuing a claim of occupational disease related to employment factors following the accepted injury or whether the accepted diagnosis of bursitis was incorrect. Those matters were not adjudicated by the Office below. *See* 20 C.F.R. § 510.2(c)(2).

CONCLUSION

The Board finds that appellant has not established a recurrence of a medical condition related to her accepted right hip bursitis.

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 9, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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