United States Department of Labor
Employees' Compensation Appeals Board

K.W., Appellant	)	
and	)	**Docket Nos. 09-2358 & 10-76**
	)	**Issued: August 23, 2010**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Salisbury, NC, Employer	)	

Appearances:
Alan J. Shapiro, 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 September 28, 2009 appellant, through counsel, filed a timely appeal from the April 7 and August 5, 2009 decisions of the Office of Workers' Compensation Programs that denied his claim. On October 13, 2009 he filed a timely appeal from an August 28, 2009 Office decision denying compensation from July 18 to October 29, 2006 and December 13, 2006 to November 21, 2007. The Board has jurisdiction to review the merits of the case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUES

The issues are: (1) whether the Office properly denied appellant's claim for an injury to his back and foot causally related to the employment injury of July 18, 2006; and (2) whether the Office properly denied compensation for the periods July 18 to October 29, 2006 and from December 13, 2006 to November 21, 2007.

On appeal, appellant, through counsel, contends that the Office's decisions are contrary to fact and law.

FACTUAL HISTORY

This case was previously before the Board. In an April 17, 2008 decision, the Board found that appellant established that he cleaned tubs and walls in a restroom during the evening of July 17, 2006. The case was remanded to the Office to determine whether he sustained an injury due to the accepted incident. The facts of the case as set forth in the Board's prior decision are incorporated by reference.[1]

In an August 31, 2006 report, Dr. Darlington I. Hart, an attending Board-certified internist, listed the accepted work incident and advised that appellant had back pain, arthralgia of an unspecified site and lower extremity pain. X-rays of appellant's foot and right hip were normal while the lumbar spine study showed degenerative changes at L5-S1 with reduced vertebral height. Dr. Hart advised that appellant had been under his care since August 31, 2006 and could return to work on September 11, 2006.

On August 31, 2006 Dr. Roxanne Burgess, a podiatrist, examined appellant and listed her impressions as bilateral bunion deformity and pain. Appellant described a work injury on July 17, 2006. Dr. Burgess advised that appellant's bunions were a congenital bone deformity and were aggravated by work, but not likely caused by work. She asked that he be excused from work that day. On September 13, 2006 Dr. Burgess advised that appellant could return to work on September 18, 2006 with the restrictions of no squatting and sedentary duty for half the workday. She noted that his bunions were not caused by his job and it was unknown if the activity described by appellant had aggravated his condition.

In a September 14, 2006 report, Dr. Bryan Springer, a Board-certified orthopedic surgeon, saw appellant at the request of Dr. Hart for evaluation of right hip and back pain present since an injury at work on July 17, 2006. He described appellant's work underneath a sink and discussed his symptoms. Dr. Springer reviewed appellant's right hip x-rays and found no evidence of degenerative changes. He recommended a magnetic resonance imaging (MRI) scan and a clinical and physical examination for an inguinal hernia. Dr. Springer noted that appellant had some evidence of protuberance with Valsalva-type maneuvers that cause discomfort. On September 28, 2006 Dr. Springer noted that a recent MRI scan showed some evidence of a paracentral disc herniation with some abutment of the left L5 nerve root with mild spondylosis and facet osteoarthritis present.[2] He suspected that appellant's symptoms could be related to a ventral abdominal hernia or an inguinal hernia. Dr. Springer recommended that he see a spine doctor for a second opinion regarding his back. Most of appellant's disc symptoms appeared to be on the left side but he also had some facet arthrosis and degenerative changes at multiple levels in the lumbar spine without significant evidence of central canal stenosis. On October 16, 2006 Dr. Springer advised that appellant's right hip shows no untoward evidence of limitations

[1] Docket No. 07-2147 (issued April 17, 2008). Appellant, a 53-year-old housekeeping aid, claimed traumatic injury to his feet and side on July 17, 2006 while cleaning a restroom.

[2] The September 25, 2006 MRI scan study was interpreted by Dr. Kevin Carroll, a Board-certified radiologist, as showing a left paracentral disc bulge at L4-5 contacting the left L5 nerve root with mild bilateral neuroforaminal narrowing; and mild spondylosis and facet osteoarthritis without additional foci of neural compromise.

on rotation or pain with any type of motion. Appellant had tenderness along the mid to lower lumbar region with normal neurological and vascular examinations.

On October 11, 1006 appellant was treated by Dr. James A. Watkins, a Board-certified surgeon, who diagnosed a moderate-sized work-related right inguinal hernia. In an October 23, 2006 note, Dr. Watkins advised that appellant would be taken off work from October 23, 2006 until surgery. On October 30, 2006 he performed an open right inguinal hernia repair. On November 14, 2006 Dr. Watkins addressed appellant's status post surgery and indicated that he would be able to return to work on December 13, 2006. He subsequently advised that appellant would be able to return to work on January 2, 2007. On December 12, 2006 Dr. Watkins noted that appellant was doing better and healing well.

Dr. James Alexander, a Board-certified physiatrist, completed reports dated November 15, 2006 through February 27, 2007. He diagnosed right-sided low back and buttock pain which appellant attributed to the July 17, 2006 work incident. Dr. Alexander noted that diagnostic testing showed an L4-5 broad-based disc bulge and bilateral foraminal narrowing, facet degeneration and L5-S1 mild degenerative changes of the facets, which were preexisting conditions with no evidence of acute injury on July 17, 2006. On November 21, 2007 he diagnosed lumbar pain and checked a box to indicate that the condition was work related. Dr. Alexander advised that appellant could return to work without restriction on November 21, 2007.

On January 3, 2008 Dr. Burgess diagnosed a bunion. She noted that appellant stated the bunion was irritated while performing job-related duties.

In a January 7, 2008 attending physician's report, Dr. Watkins diagnosed a right inguinal hernia. In response to the form question of whether the diagnosed condition was related to the employment activity, he wrote, "*Possibly* -- but we did not see patient until October 9, 2006." Dr. Watkins listed appellant's period of total disability as October 9, 2006 through January 2, 2007 with partial disability from January 2 through 16, 2007.

The record reflects that on May 2, 2008 the Office accepted appellant's claim for a right inguinal hernia.

In a September 15, 2008 report, Dr. Watkins reiterated that he initially evaluated appellant on October 9, 2006. Appellant stated that he developed pain and discomfort while at work doing work-related activities. On examination, Dr. Watkins found a reducible right inguinal hernia and he performed surgical repair on October 30, 2006. In a November 4, 2006 postoperative evaluation, appellant complained of pain shooting down into his foot and toes; and as of December 12, 2006, he complained of some discomfort but was healing nicely. Dr. Watkins advised appellant to stay off work for several more weeks and to return if necessary.

On January 28, 2009 appellant submitted a claim for wage-loss compensation for intermittent disability commencing July 18, 2006.

In a March 19, 2009 decision, the Office found that appellant was entitled to compensation following his surgery from November 6 to December 12, 1006. It denied compensation from July 18 through October 27, 2006 and after December 12, 2006 as the

medical evidence established treatment for his back and feet, conditions not accepted as related to the July 17, 2006 injury.

On March 26, 2009 appellant requested a hearing before an Office hearing representative.

In an April 7, 2009 decision, the Office denied appellant's claim for his foot and back conditions, finding the medical evidence was not sufficient to establish they were related to the July 17, 2006 injury.

On April 13, 2009 appellant requested a hearing with regard to the April 7, 2009 decision.

A hearing was held on June 8, 2009 with regard to the March 19, 2009 decision. A June 16, 2009 hearing was held on the April 7, 2009 decision. No further evidence was submitted.[3]

In an August 5, 2009 decision, an Office hearing representative affirmed the April 7, 2009 decision denying appellant's claim for his bilateral foot and low back conditions.

In a decision dated August 28, 2009, an Office hearing representative modified the March 19, 2009 decision to find appellant entitled to wage-loss compensation from October 30 through December 12, 2006. She affirmed the denial of compensation from July 18 to October 29, 2006 and December 13, 2006 to November 21, 2007.

LEGAL PRECEDENT -- ISSUE 1

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related the employment factors identified by the claimant.[4]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[5]

[3] On July 1, 2009 the Office approved leave buy back from October 30 through November 3, 2006.

[4] *D.I.*, 59 ECAB __ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

[5] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008).

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for a right inguinal hernia causally related to his July 17, 2006 work injury. However, it found that his bilateral foot and low back conditions were not related to the work injury.

The Board finds that appellant has not submitted sufficient medical evidence on causal relationship to establish a bilateral foot or low back condition arising from the July 17, 2006 injury at work.

The Office accepted a right inguinal hernia based on the reports of Dr. Watkins who treated appellant and performed surgery on October 30, 2006. The reports of Dr. Watkins do not provide any opinion addressing the relationship of appellant's foot symptoms or low back complaints to the July 17, 2006 work injury. Therefore, these reports are not relevant to establishing this aspect of appellant's claim.

Dr. Hart treated appellant for back pain, arthralgia at an unspecified site and lower extremity pain. He obtained x-rays of appellant's right foot and hip, which he advised were normal. X-rays of the low back showed degenerative changes involving the lumbar spine. Dr. Hart advised that appellant was able to return to work as of September 11, 2006 but provided no opinion explaining how the findings pertaining to appellant's foot, right hip or lumbar spine related to the July 17, 2006 injury. This evidence is not sufficient to establish appellant's claim.

Dr. Springer treated appellant at the request of Dr. Hart for evaluation of right hip and low back pain present since the incident at work on July 17, 2006. He reviewed diagnostic studies of the right hip that did not evidence any degenerative disease. Based on his clinical examination, Dr. Springer noted that appellant's symptoms were possibly due to inguinal hernia. He also reviewed an MRI scan that revealed disc herniation at L5 with spondylosis and facet osteoarthritis. Dr. Springer recommended that appellant be seen by a surgeon for treatment of the hernia and by a spine specialist regarding the low back. He failed to provide an opinion addressing the issue of causal relationship. Although Dr. Springer noted a history of appellant's July 17, 2006 injury, he did not explain how appellant's work that evening would cause or contribute to the conditions for which he was treated. This evidence is not sufficient to establish that appellant sustained injury beyond the accepted hernia.

Dr. Alexander checked a box indicating that appellant's lumbar pain was work related. It is well established, however, that a physician's opinion that consists of a checkmark on a form report is of diminished probative value.[6] Dr. Alexander did not provide a narrative opinion addressing how the accepted injury would cause or contribute to appellant's low back symptoms or diagnosed degenerative disease. He initially noted that appellant's back condition was a preexisting condition with no evidence of an acute injury on July 17, 2006, but never further explained this aspect of his reports. This reduces the probative value of his medical opinion.

Dr. Burgess treated appellant and diagnosed a bilateral bunion condition which she described as a congenital bone deformity. She noted that appellant's job could have aggravated

[6] *See Cecelia M. Corley*, 56 ECAB 662 (2005).

his bunions but that they were not caused by his work. Subsequently, Dr. Burgess reiterated that appellant's bunions were not caused by his job and stated that it was unknown if the work activity described by him had aggravated his condition. Her reports are equivocal on the issue of causal relation and speculative in explaining that his work could have aggravated his condition. Dr. Burgess' reports are not sufficient to establish that appellant's bunion condition was caused or contributed to by his accepted injury.

An award of compensation may not be based on surmise, conjecture, speculation or a claimant's own belief of causal relationship.[7] The medical evidence of record is not sufficient to establish that appellant sustained an injury to his low back or feet causally related to his July 17, 2006 injury. Accordingly, the Board finds that appellant failed to meet his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

For each period of disability claimed, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury.[8] The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[9]

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. Appellant's burden of proving he was disabled on particular dates requires that he 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 medical reasoning.[10] Where no such rationale is present, the medical evidence is of diminished probative value.[11]

ANALYSIS -- ISSUE 2

As noted, the Office accepted appellant's claim for a right inguinal hernia for which he underwent surgery on October 30, 2006. It paid wage-loss compensation from that day to December 12, 2006, the date of a treatment note from Dr. Watkins. The Board finds that the period of appellant's disability related to his inguinal surgery extended through January 2, 2007, the date Dr. Watkins advised that he was no longer totally disabled.

The Office apparently relied on the December 12, 2006 treatment note when Dr. Watkins advised that appellant was doing well postsurgery and was healing. Dr. Watkins, however, did

[7] *John D. Jackson*, 55 ECAB 465 (2004).

[8] *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also David H. Goss*, 32 ECAB 24 (1980).

[9] *Fereidoon Kharabi*, *supra* note 8.

[10] *Ronald E. Eldridge*, 53 ECAB 218 (2001).

[11] *Mary A. Ceglia*, 55 ECAB 626 (2004).

not make a finding that appellant was released from care or no longer had disability related to the accepted hernia condition. Rather, on January 7, 2007 he advised that the period of total disability extended through January 2, 2007. Thereafter, on September 15, 2008 Dr. Watkins reiterated that on December 12, 2006 appellant still had discomfort following surgery for which he kept appellant off for several more weeks. Based on the medical evidence from appellant's attending surgeon, the Board finds that the period of disability related to surgery for the accepted hernia condition extended through January 2, 2007.

With regard to the period July 18 through October 29, 2006 and after January 3, 2007, the medical evidence does not establish that appellant had disability for work due to his accepted hernia condition. In this regard, the reports of Dr. Watkins do not address appellant's total disability prior to the date surgery was performed on October 30, 2006. He completed several form reports, but did not address how appellant was disabled due to the right inguinal hernia condition prior to surgery.

Further, the remaining medical evidence of record addressing intermittent periods of disability does not relate appellant's incapacity for work to his accepted hernia condition. Dr. Hart only noted that appellant had been under his care since August 31, 2006 and could return to work on September 11, 2006. He did not treat appellant for his hernia condition or relate his disability to the accepted injury in this case. Dr. Burgess only discussed appellant's bunion condition, again not accepted by the Office as employment related. The Board will affirm Office's denial of wage-loss compensation from July 18 through October 29, 2006 and commencing January 3, 2007.

CONCLUSION

The Board finds that appellant did not establish that he sustained injury to his feet or low back due to the July 17, 2006 injury. The Board finds that the period of disability related to his accepted hernia condition was October 30, 2006 to January 2, 2007. Finally, appellant did not establish his disability from July 18 through October 29, 2006 and from January 3, 2007 as related to his accepted hernia condition.

ORDER

IT IS HEREBY ORDERED THAT the August 5 and April 7, 2009 decisions of the Office of Workers' Compensation Programs be affirmed. The Office's August 28, 2009 decision is affirmed as modified to reflect that appellant is entitled to compensation from October 30, 2006 through January 2, 2007.

Issued: August 23, 2010
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