United States Department of Labor
Employees' Compensation Appeals Board

T.R., Appellant	)	
and	)	**Docket No. 09-1854**
	)	**Issued: June 15, 2010**
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Alpine, CA, Employer	)	

Appearances:
Sally La Macchia, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 13, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated May 28, 2009, which denied his claim for a recurrence. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a recurrence of disability on or after July 10, 2002 causally related to his May 11, 2002 work-related injury.

FACTUAL HISTORY

This case has previously been on appeal before the Board.[1] In separate decisions dated November 5, 2003 and March 6, 2006, the Board found that appellant had not met his burden of proof to establish a recurrence of disability on or after July 10, 2002 causally related to his accepted May 11, 2002 employment injury. The Board notes that appellant's claim was accepted

[1] Docket Nos. 03-1008 (issued November 5, 2003) and 05-1925 (issued March 6, 2006).

for left quadriceps strain. The facts and the history contained in the prior appeals are incorporated by reference.

By letter dated January 31, 2007, appellant's representative requested reconsideration and submitted additional medical evidence. She noted the background of the claim and repeated previous arguments related to whether the claim was properly adjudicated as a recurrence of disability and alleged error by the Board. Appellant's representative also repeated her arguments concerning appellant's preexisting osteoarthritis and degenerative joint disease and repeated her request that the Office expand his claim to include osteoarthritis, osteopenia, avascular necrosis, chronic pain and degenerative disc disease.

The additional evidence included an August 2, 2006 report from Dr. Paul Murphy, a Board-certified orthopedic surgeon, who noted a history of chronic pain. Dr. Murphy's examination revealed tenderness in the bilateral sacroiliac joints, and the left and right groin areas. In an August 24, 2006 report, he diagnosed mild avascular necrosis.

In an August 8, 2006 report from Dr. Jean-Jacques Abitbol, a Board-certified orthopedic surgeon, diagnosed "lumbar syndrome." The Office also received progress reports dated February 12 and March 26, 2007, from Dr. Abitbol who noted that appellant was seen for hip pain.

An August 17, 2006 magnetic resonance imaging (MRI) scan of the lumbar spine read by Dr. Lori M. Baker, a Board-certified diagnostic radiologist, revealed minimal left paramedian disc protrusion at L5-S1 and a minimal broad-based disc bulge at L3-4. An August 17, 2006 MRI scan of the bilateral hips read by Dr. James A. Cooper, a Board-certified diagnostic radiologist revealed avascular necrosis.

An August 25, 2006 treatment note from Dr. Michelle Hamidi, a Board-certified family practitioner, diagnosed lumbago. In February 12 and March 26, 2007 treatment notes, Dr. Hamidi reported findings and diagnosed avascular necrosis of both hips.

In a November 15, 2006 report, Dr. Peter B. Hanson, a Board-certified orthopedic surgeon, noted that he was treating appellant for avascular necrosis of the hips. He indicated that he first saw appellant on February 25, 2004. Dr. Hanson explained that, when he saw appellant on November 10, 2004, he opined that "appellant's job did not cause osteoarthritis or osteopenia or other joint disease, but rather that it caused symptoms related to the osteoarthritis by exacerbating it." He explained that the "patient's osteoarthritis and degenerative joint disease looks accelerated by the performances of his job duties." Dr. Hanson noted that a 2006 MRI scan of the lumbar spine revealed a left median disc protrusion at L4, L5-S1 to left peroneal disc protrusion. He opined that his opinion has not changed. Dr. Hanson reiterated that appellant was a seasonal firefighter who began having pain "while doing his usual and customary job." He opined that appellant's osteoarthritis and/or avascular necrosis and pain was brought on and/or exacerbated by his work. Dr. Hanson opined that it was "medically reasonably and probable that [appellant's] duties as a seasonal firefighter contributed in a measurable way to his present condition of avascular necrosis, of the hips and that it brought about and/or exacerbated his pain." He also indicated that appellant's inability to work as firefighter on and after July 10, 2002 was caused by his May 11, 2002 employment injury. Dr. Hanson opined that his duties as

a firefighter did not directly cause his avascular necrosis/osteoarthritis of the hip, but that they did accelerate, precipitate or aggravate the left hip conditions. In a December 28, 2006 report, he noted that appellant presented for a reevaluation. Dr. Hanson advised that appellant's hip conditions were largely asymptomatic.

By decision dated June 29, 2007, the Office denied appellant's request for reconsideration on the grounds that evidence submitted in support of the request was insufficient to warrant a merit review of the claim.

On May 21, 2008 appellant's representative filed an application for review of the Office's June 29, 2007 decision. On February 12, 2009 the Board issued an order remanding the case.[2] The Board found the appeal was not in posture for decision as the case record forwarded to the Board was incomplete. The Board set aside the Office's June 29, 2007 decision and remanded the case for the Office to reconstruct the record.

Appellant submitted a January 8, 2009 report from Dr. Hanson who diagnosed avascular necrosis of both hips. In response to a question from appellant's representative on the etiology of appellant's avascular necrosis, Dr. Hanson opined:

> "With regards to the etiology of avascular necrosis in [appellant], I do not have a definitive answer. About half the time it is idiopathic, meaning we cannot pinpoint its origin. Other factors can be the use of steroids, as you are discussing, or excessive alcohol intake. To my knowledge, the patient has never been a heavy drinker. Sickle cell disease can cause it, which he does not have. Inflammatory arthropathies such as rheumatoid arthritis can contribute as well, which he does not have. People with pulmonary disease tend to get it, usually because they are taking oral steroids. To my knowledge he was never a deep-sea diver, who can also develop it."

By decision dated May 28, 2009, the Office denied appellant's claim for a recurrence of disability commencing July 10, 2002 causally related to his May 11, 2002 employment injury.

LEGAL PRECEDENT

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[3]

---

[2] Docket No. 08-1599 (issued February 12, 2009).

[3] *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

Office regulations provide that 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. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn, (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[4]

ANALYSIS

The Board finds that appellant has not shown a change in the nature and extent of his work-related injury or of the light-duty requirements.

Appellant failed to submit sufficient medical evidence to show that he cannot perform his light-duty position due to his original employment injury accepted for a left quadriceps strain.

In support of his claim, appellant submitted an August 2, 2006 report from Dr. Murphy who noted a history of chronic pain and tenderness in the bilateral sacroiliac joints, and the left and right groin areas. In an August 24, 2006 report, Dr. Murphy diagnosed mild avascular necrosis. Appellant also submitted progress reports dated February 12 and March 26, 2007, from Dr. Abitbol, who noted that appellant was seen for hip pain. Neither of these physicians supported that the accepted left quadriceps strain caused disability beginning July 10, 2009 nor did they otherwise support a spontaneous change in a medical condition which had resulted from the accepted left quadriceps strain. The Board has also held that a diagnosis of "pain" does not constitute the basis for the payment of compensation.[5] These reports are of limited probative value.

Appellant also submitted: an August 8, 2006 report from Dr. Abitbol, who diagnosed "lumbar syndrome"; an August 25, 2006 treatment note from Dr. Hamidi, who diagnosed lumbago; and a March 26, 2007 report from Dr. Hamidi, who diagnosed avascular necrosis of both hips. These reports also do not specifically address appellant's disability beginning July 10, 2002 as being due to the May 11, 2002 traumatic injury. For example, none of the physicians explained how these conditions, which were not accepted, stemmed from the accepted injury or discussed whether appellant was unable to perform his light-duty position on or after July 10, 2002, thus these reports are of little probative value.[6]

Appellant also submitted several reports from Dr. Hanson. In a November 15, 2006 report, Dr. Hanson noted that he was treating appellant for avascular necrosis of his hips. He opined that appellant's firefighter duties did not directly cause his avascular

---

[4] 20 C.F.R. § 10.5(x).

[5] *John L. Clark*, 32 ECAB 1618 (1981).

[6] *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

necrosis/osteoarthritis of the hip, but they did accelerate, precipitate or aggravate the left hip conditions. Dr. Hanson opined that it was "medically reasonably and probable that [appellant's] duties as a seasonal firefighter contributed in a measurable way to his present condition of avascular necrosis, of the hips and that it brought about and/or exacerbated his pain." He indicated that appellant's inability to work as firefighter after July 10, 2002 was due to his May 11, 2002 employment injury. In his January 9, 2009 report, Dr. Hanson clarified his opinion with regard to the avascular necrosis of the hips. He opined that he did not have a definitive answer. Dr. Hanson explained that the condition was "idiopathic, meaning we cannot pinpoint its origin." He noted that other factors could be contributors such as steroids, excessive alcohol intake, sickle cell disease and rheumatoid arthritis. Dr. Hanson offered no reasoned explanation regarding how the accepted left quadriceps strain could have caused or aggravated avascular necrosis in the hips. The Board finds that Dr. Hanson's reports are speculative in nature as he indicated that he could not offer a definite opinion on the cause of appellant's condition.[7] The Board finds that these reports are of limited probative value.

Appellant also submitted an August 17, 2006 MRI scan of the lumbar spine read by Dr. Baker and an August 17, 2006 MRI scan of the bilateral hips, read by Dr. Cooper. These reports merely reported findings and did not contain an opinion regarding the cause of the reported condition. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.[8]

Other medical reports submitted by appellant are insufficient to meet his burden of proof as they do not specifically address whether his employment injury was the cause of his disability beginning July 10, 2002.

Appellant's representative also alleged before the Office that the Board was mistaken with regard to the treatment of appellant's claim as a recurrence. However, the Board has previously considered this assertion and again finds this argument without merit as appellant filed the claim for a recurrence of disability and the Office appropriately developed this claim.[9]

On appeal, counsel contends that the Office ignored the Board's February 12, 2009 order directing reconstruction of the record. The Board notes, however, that there is no evidence that the Office did not comply with the Board's order as the record presently before the Board appears complete.

[7] *See Leonard J. O Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

[8] *See S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009) (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).

[9] The Board notes that appellant was not precluded from filing claims with the Office regarding other matters as he deemed appropriate.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability on or after July 10, 2002 causally related to his accepted May 11, 2002 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 28, 2009 is affirmed.

Issued: June 15, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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