United States Department of Labor
Employees' Compensation Appeals Board

L.G., Appellant	)	
and	)	**Docket No. 11-142**
	)	**Issued: August 12, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Springfield, MA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On October 25, 2010 appellant filed a timely appeal from a July 20, 2010 merit decision of the Office of Workers' Compensation Programs denying her recurrence claim. Pursuant to the Federal Employees' Compensation Act[1] and 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 has established that she sustained a recurrence of disability on or after November 30, 2009.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 17, 2009 appellant, then a 29-year-old mail handler, filed a traumatic injury claim alleging that she sustained a back injury on that date in the performance of duty while lifting bundles of magazines from a wire cage. The Office accepted her claim for lumbar sprain. She returned to restricted duty on September 28, 2009.

On December 16, 2009 appellant submitted a notice of recurrence alleging that she was totally disabled from work as of November 30, 2009. She stated that her back pain had worsened on that date "three hours into [her] shift while lifting." Appellant noted that she had injured her neck in a nonwork-related motor vehicle accident on November 23, 2009.

Appellant was treated by Dr. George W. Moore, a treating physician, who diagnosed lumbar strain. On October 6, 2009 Dr. Moore noted that although she had been working within restrictions of lifting, pushing and pulling no more than 10 pounds, appellant continued to experience aching, stabbing and sharp-shooting lower back pain, which was exacerbated by activity. Notes dated October 14, 23 and 30, 2009 reflected no improvement in appellant's symptoms, which continued to be aggravated by activity.

On December 1, 2009 Dr. Moore diagnosed pars defect, pursuant to a November 17, 2009 magnetic resonance imaging (MRI) scan, as well as lumbosacral strain. On examination, he found bilateral tenderness with full range of motion and tenderness of the lumbosacral spine and paraspinous muscles. Flexion was to 90 degrees with pain. In a December 15, 2009 duty status report, Dr. Moore indicated that appellant was unable to work due to severe low back pain. He diagnosed sprain and spondylolysis due to the September 17, 2009 injury.

Appellant submitted a December 2, 2009 report from Dr. Donald Waugh, a treating physician, who noted appellant's complaints of low back pain, which had been aggravated by bending at work. Deep palpation of the lumbosacral spine revealed paravertebral spasm in the L4-5 area. Forward flexion was limited to 15 degrees. Appellant was unable to squat without pain. Lateral rotation was limited to 10 degrees bilaterally. Dr. Waugh noted evidence on MRI scan of bilateral pars interarticularis defects without evidence of spondylolisthesis and no impingement. He opined that appellant was unable to work.

In a December 16, 2009 report, Dr. Richard N. Norris, a Board-certified physiatrist, provided a history of injury and diagnosed a sprain of the sacroiliac ligaments and symptomatic spondylosis at L5-S1. He related appellant's complaints of continuous pain, which had been worsened by physical therapy. Dr. Norris stated that appellant had "no history of any back injury or problems." He provided examination findings and observed that an MRI scan was significant for bilateral L5 pars fracture without evidence of spondylolisthesis. On January 28, 2010 Dr. Norris performed a sacroiliac injection procedure.

On January 4, 2010 the employing establishment controverted appellant's recurrence claim, contending that the medical evidence was insufficient to establish causal relationship between her claimed condition and the accepted injury. It also alleged that appellant was injured in a motor vehicle accident on November 23, 2009, which constituted an intervening event.

The record contains a statement dated December 11, 2009 from a Kevin Trombley who indicated that on November 30, 2009 appellant informed him that while on vacation, she had sustained injuries to her neck when the vehicle in which she was a passenger was rear ended at a red light.

In a letter dated February 9, 2010, the Office informed appellant that the evidence and information submitted was insufficient to establish her claim. Appellant was advised to submit a medical report with a diagnosis and opinion explaining how the claimed disabling condition was causally related to the accepted injury.

The record contains a report of a July 27, 2008 MRI scan of the lumbar spine and a March 11, 2011 x-ray of the lumbar spine.

Appellant submitted December 2, 2009 progress notes from Debbie L. Murray, a physician's assistant, who reported that appellant was involved in a November 23, 2009 motor vehicle accident. When the vehicle in which appellant was a passenger was rear-ended at a stop light, appellant felt her upper body "shift forward and back." She complained of bilateral upper trapezius tightness and discomfort.

In a November 24, 2009 report, Dr. A. Maria Carlton, a chiropractor, diagnosed cervical radiculopathy; acute post-traumatic cervical and thoracic sprain; and headaches. She noted that appellant sustained upper and lower back injuries as a result of a 1998 automobile accident and an upper back injury in a 2006 motor vehicle accident.

In a May 5, 2010 report, Dr. Moore diagnosed lumbar strain and sacral/coccyx fracture, pars deficit, closed. He opined that there was a causal relationship between appellant's accepted September 17, 2009 injury and her employment, and that her pars defect, a stress fracture, occurred at the time of her accepted injury. Dr. Moore stated that appellant was unable to work.

By decision dated March 25, 2010, the Office denied appellant's recurrence claim, finding that she had not submitted sufficient evidence to establish a causal relationship between her current condition and the accepted September 27, 2009 injury. On May 10, 2010 appellant requested reconsideration.

Appellant submitted a July 6, 2010 report from Dr. Natasha McKay, a treating physician, who provided examination findings and diagnosed lumbosacral pars defects, with no subluxation pursuant to a November 11, 2009 MRI scan. She indicated that appellant was working light duty when she was involved in a motor vehicle accident on November 23, 2009. Dr. McKay stated, "This worsened the back pain and she has been unable to return to work."

By decision dated July 20, 2010, OWCP denied modification of its prior decision. The senior claims examiner determined that the March 25, 2010 decision failed to address all evidence of record or to explain the reasoning for its decision. It found, however, after fully

considering all evidence presented, that the medical evidence was insufficient to establish a recurrence of disability causally related to appellant's accepted injury.[2]

LEGAL PRECEDENT

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[3]

OWCP procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change, demonstrated by objective findings, in the medical condition that resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.[4]

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 show that he 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.[5]

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.[6] 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

[2] In his July 20, 2010 decision, the claims examiner stated that he was "vacating" the March 25, 2010 decision in part because it failed to address all evidence or explain its reasoning. He also "affirmed" OWCP's denial of appellant's recurrence claim. The Board notes that FECA's implementing regulations provide that when an application for reconsideration is granted, OWCP will review the decision for which reconsideration is sought on the merits and determine whether the new evidence or argument requires modification of the prior decision. *See* 20 C.F.R. § 10.609. Therefore, the July 20, 2010 decision effectively denied modification of the March 25, 2010 decision.

[3] 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997). *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

[5] *Terry R. Hedman*, 38 ECAB 222 (1986).

[6] *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

condition is causally related to the employment injury.[7] The physician's conclusion must be supported by sound medical reasoning.[8]

ANALYSIS

The Office accepted that appellant sustained a lumbar sprain on September 17, 2009 in the performance of duty. The record reflects that she returned to restricted duty on September 28, 2009. The issue is whether appellant has established that she sustained a recurrence of disability on or after November 30, 2009 causally related to his accepted injury.

The evidence of record fails to establish that appellant sustained a recurrence of disability.[9] Appellant neither alleged nor established that she experienced a spontaneous change in her medical condition due to the accepted injury. Rather, she reported to the Office and to her physicians that her back pain worsened on November 30, 2009 "three hours into [her] shift while lifting." Appellant also indicated that her pain was aggravated by activity, flexion or extension and was subsequently exacerbated by physical therapy sessions. The Board finds that her claim does not meet the definition of a recurrence of disability.[10]

Appellant did not allege that her light-duty job requirements changed or that her position was withdrawn. Rather, she contended that her accepted condition worsened such that she was unable to perform the duties of her position. The medical evidence of record, however, fails to establish that her claimed disabling condition was causally related to the employment injury.[11]

In October, 2009 reports, Dr. Moore diagnosed lumbar sprain and stated that appellant continued to experience aching, stabbing and sharp-shooting lower back pain, which was exacerbated by activity. On December 1, 2009 he provided examination findings and diagnosed pars deficit and lumbosacral strain. In a December 15, 2009 duty status report, Dr. Moore diagnosed back sprain and spondylolysis and indicated that appellant was unable to work due to severe low back pain. He did not, however, express an opinion as to the cause of appellant's conditions. Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[12] Further, Dr. Moore did not explain how the newly diagnosed pars deficit and spondylolysis conditions were causally related to the only accepted condition, namely lumbar sprain, rather than to an intervening event.

On May 5, 2010 Dr. Moore diagnosed lumbar strain and sacral/coccyx fracture, pars defect, closed. He opined that there was a causal relationship between appellant's accepted

[7] *S.S.*, 59 ECAB 315 (2008).

[8] *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

[9] *See supra* note 3 and accompanying text.

[10] *See Bryant F. Blackmon*, 56 ECAB 752 (2005).

[11] *S.S.*, 59 ECAB 152 (2008).

[12] *A.D.*, 58 ECAB 149 (2006); *Michael E. Smith*, 50 ECAB 313 (1999).

September 17, 2009 injury and her employment. The Board notes that the causal relationship between appellant's lumbar sprain and her employment was not at issue, as the Office accepted that appellant sustained a lumbar sprain in the performance of duty on September 17, 2009. The issue is whether she sustained a spontaneous recurrence of disability on November 30, 2009. Dr. Moore also opined that appellant's pars defect occurred at the time of her accepted injury. He did not, however, explain how the newly diagnosed condition was causally related to the September 17, 2009 incident. The Board has held that a medical opinion that is not fortified by rationale is of diminished probative value.[13] Additionally, the Board notes that Dr. Moore's opinion does not support a spontaneous recurrence of a lumbar sprain, but rather seems to suggest that appellant's claim should be expanded to include an additional condition. In any event, this opinion is insufficiently rationalized to establish appellant's claim.

Dr. Waugh attributed appellant's current low back pain to recent activities at work, such as bending. Thus, he opined that appellant's claimed disability was not a spontaneous occurrence, but was a new injury.

Dr. Norris provided a history of injury and diagnosed a sprain of the sacroiliac ligaments and symptomatic spondylosis at L5-S1. His report, however, does not contain an opinion on the cause of appellant's diagnosed conditions. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[14] The Board also notes that Dr. Norris' history of injury is inconsistent with the evidence of record, which indicates that appellant had a prior history of back injuries. Additionally, his note that physical therapy had worsened appellant's pain further supports that any claimed disability in this case is a result of a new injury, rather than a recurrence of an old one.

In December 2, 2009 progress notes, Debbie Murray, a physician's assistant, reported that when appellant's vehicle was rear-ended on November 23, 2009, she felt her upper body "shift forward and back." As physician's assistants are not considered to be physicians under FECA, her report does not constitute probative medical evidence.[15] It is relevant, however, to the cause of appellant's claimed disability and suggests that her current condition may have been caused by an intervening event rather than a spontaneous change in her condition.

Dr. Carlton, a chiropractor, diagnosed cervical radiculopathy; acute post-traumatic cervical and thoracic sprain and headaches. The record does not contain evidence of a diagnosis of subluxation by x-ray. Therefore, he is not considered a "physician" under FECA and her report does not constitute probative medical evidence.[16]

[13] *Cecilia M. Corley*, 56 ECAB 662 (2005).

[14] *Michael E. Smith*, 50 ECAB 313 (1999).

[15] Physician's assistants do not qualify as "physicians" under the Act. Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[16] *Id.*

On July 6, 2010 Dr. McKay provided examination findings and diagnosed lumbosacral pars defect, with no subluxation pursuant to a November 11, 2009 MRI scan. She indicated that appellant was working light duty when she was involved in a motor vehicle accident on November 23, 2009. Dr. McKay stated, "This worsened the back pain and she has been unable to return to work." His conclusion that the trauma of the November 23, 2009 motor vehicle accident worsened the back pain suggests that appellant's current condition is due to an intervening event, rather than to a spontaneous occurrence related to the September 17, 2009 incident. Reports of MRI scan and other diagnostic test results which do not contain an opinion on causal relationship are also of limited probative value.

Appellant did not submit any medical reports from a physician who, on the basis of a complete and accurate factual and medical history, concluded that she was totally disabled as of November 30, 2009 due to residuals of her accepted injury. She has failed to establish by the weight of the reliable, probative and substantial evidence, a change in the nature and extent of the injury-related condition resulting in her inability to perform the duties of her modified employment. As appellant has not submitted any medical evidence showing that she sustained a recurrence of disability due to her accepted employment injury, the Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to the Office within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability on or after November 30, 2009.

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board