United States Department of Labor
Employees' Compensation Appeals Board

H.M., Appellant	)	
and	)	**Docket No. 11-810**
	)	**Issued: October 14, 2011**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Columbus, OH, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 4, 2011 appellant filed a timely appeal from an August 10, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) finding that he did not sustain a recurrence of disability.[1] Pursuant to the Federal Employees' Compensation Act (FECA)[2] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of OWCP's decision. *See* 20 C.F.R. § 501.3(f)(2). As OWCP's decision was issued on August 10, 2010, the 180-day computation begins August 11, 2010. Since using February 11, 2011, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is February 4, 2011, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] 5 U.S.C. § 8101 *et seq.*

[3] The record also contains a January 25, 2011 decision of OWCP granting appellant a schedule award. Appellant has not appealed the January 25, 2001 decision in the current appeal and thus it is not before the Board. *See* 20 C.F.R. § 501.3.

ISSUE

The issue is whether appellant sustained a recurrence of disability on January 30, 2010 causally related to his April 15, 2008 employment injury.

FACTUAL HISTORY

On April 15, 2008 appellant, then a 54-year-old mail handler, filed a claim alleging that he felt a sharp pain in his right hip on that date after pushing a cart of flat mail. OWCP accepted the claim for a right hip sprain, a sprain of the lumbosacral joint and a right hip labral tear. On November 6, 2008 appellant underwent an arthroscopic osteochondroplasty decompression of the femoral acetabular impingement, a synovectomy, a labral debridement and chondral chondroplasty and a loose body removal of the right hip. On February 28, 2009 he returned to full-time limited-duty employment.

In form reports dated January 20, 2010, Dr. Keith R. Berend, an attending Board-certified orthopedic surgeon, diagnosed a right hip and thigh sprain/strain and found that appellant could work six hours per day with restrictions.[4] He checked "yes" the diagnosed condition was caused or aggravated by employment.

On February 16, 2010 appellant filed a claim for compensation for two hours per day of lost time from work beginning January 30, 2010. By letter dated February 22, 2010, OWCP noted that Dr. Berend had not explained his finding that appellant could only work six hours per day. It requested that appellant submit additional factual and medical information, including a comprehensive medical report addressing how his condition was related to his employment injury and any periods of disability.

On February 19, 2010 Dr. Jason M. Hurst, a Board-certified orthopedic surgeon, evaluated appellant for complaints of pain in the right hip and posterior thigh. He diagnosed a right hip sprain/strain, osteoarthritis of the right hip, lumbar sprain/strain and lumbar radiculopathy. In an accompanying duty status report, Dr. Hurst asserted that appellant could work six hours per day with restrictions. In a form report dated February 23, 2010, he listed findings of moderate joint space narrowing of the right hip and spinal radiculopathy. Dr. Hurst diagnosed a sprain of the right hip and lumbar spine and checked "yes" that the condition was caused or aggravated by employment. He found that appellant should continue working six hours per day.

By letter dated March 4, 2010, appellant related that he sustained increased low back and right lower extremity pain after working three hours. In January 2010, he experienced right leg weakness and problems walking. Appellant maintained that Dr. Berend placed him on a six-hour work status, which helped his back pain but not his right lower extremity weakness.

By decision dated April 1, 2010, OWCP found that appellant had not established an employment-related recurrence of disability beginning January 30, 2010. It determined that he

[4] In a narrative report of the same date, a physician's assistant diagnosed a right hip and thigh sprain and indicated that he could "continue present activity."

had not submitted any rationalized medical evidence explaining why he was unable to perform his full-time limited-duty employment.

On April 22, 2010 appellant requested a review of the written record.[5] He submitted a report dated May 5, 2010 from Dr. Larry T. Todd, Jr., an osteopath who is Board-certified with the American Osteopathic Association in orthopedic surgery, who reviewed appellant's history of an injury on April 15, 2008 after pushing heavy containers at work. Dr. Todd diagnosed congenital stenosis at L3 to L5, a disc bulge with lateral recess narrowing and a lumbar sprain. He related that he could not provide a neurological explanation for appellant's complaint that his legs gave out when he pushed objects. Dr. Todd recommended an evaluation by a neurologist. He opined that appellant's pain "could be facet mediated. It could be muscular mediated. It could be sacroiliac joint mediated or it could be disc mediated." Dr. Todd stated:

> "I feel there are a lot of unanswered questions here and I am not exactly sure where all of his symptoms are coming from. Ultimately, we will hopefully help him with his pain. [Appellant] states at times he has to use a cane and feels like he is disabled and not able to do his job. He states he did not have any problems until he had this recent work-related accident. I instructed [appellant] that obviously there are some preexisting conditions in his spine such as his disc degeneration and his congenital stenosis. Ultimately, [appellant] may have just had a significant exacerbation of his preexisting condition."

On May 14, 2010 Dr. Michael J. Simek, a Board-certified physiatrist, evaluated appellant for low back pain with radiculopathy into the right leg. He discussed his history of "chronic low back pain and right hip pain since 2008 when he injured himself at work pushing heavy containers." Dr. Simek diagnosed lumbosacral sprain/strain with persistent mechanical low back pain, symptoms of right lumbar radiculopathy and mild degenerative disc disease at L2 through L5 without significant neurocompressive lesions. He recommended physical therapy.

On August 4, 2010 Dr. Todd diagnosed congenital stenosis, lumbar sprain and disc bulges with lateral recess narrowing mainly at L3-L5. He stated, "At this time, [appellant] still describes the incident where this all started about two years ago. Dr. Todd states [appellant] used a cane and his symptoms got better, but now over the last several months here, it is to the point where the cane is not helping him." He recommended a neurological consultation. Dr. Todd asserted :

> "[Appellant] did go over again that he loves his job. He states that it keeps him active, keeps his weight under control, and he loves getting out of the house. [Appellant] does describe that he sits down and does a lot of sorting of mail. He states that he feels there is a lot of weight that goes along with sliding of weight and sorting of weight of the mail. [Appellant] states he may be doing more than what he feels his body can tolerate. He states he will discuss that at his work, and he will adjust that accordingly."

[5] A magnetic resonance imaging (MRI) scan study dated April 19, 2010 revealed a developmentally narrowed central canal and neural foramen at all levels but L5-S1 and disc bulges and spondylotic changes at L2-L5.

By decision dated August 10, 2010, the hearing representative affirmed the April 1, 2010 decision.

On appeal appellant argued that the April 15, 2008 work injury caused back problems and that he experienced severe pain after more than six hours of work. He maintains that he is no longer able to work full time or his regular employment and that his work injury necessitated the use of a cane. Appellant noted that in January 2010 Dr. Berend found that he could only work six hours per day.

LEGAL PRECEDENT

Where 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 job requirements.[6]

OWCP 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.[7] 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.[8]

ANALYSIS

OWCP accepted that appellant sustained right hip sprain, a sprain of the lumbosacral joint and a right hip labral tear due to an April 15, 2008 employment injury. On November 6, 2008 appellant underwent surgery on his right hip. He returned to full-time limited-duty employment on February 28, 2009. Appellant reduced his work hours to six hours a day and filed a claim for compensation for the remaining two hours per day beginning January 30, 2010.

Appellant has not alleged a change in the nature and extent of his light-duty job requirements. Instead, he attributed his recurrence of disability to a change in the nature and

[6] *Richard A. Neidert*, 57 ECAB 474 (2006); *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

[7] 20 C.F.R. § 10.5(x).

[8] *Id*.

extent of his employment-related conditions. Appellant must provide probative medical opinion to establish that he was disabled due to a worsening of his accepted work-related conditions.[9]

In form reports dated January 20, 2010, Dr. Berend diagnosed a right hip and thigh sprain/strain and found that appellant could work six hours per day with restrictions.[10] He checked "yes" that the condition was caused or aggravated by employment. Dr. Berend, however, did not provide any rationale for his causation finding or his opinion that appellant could not work full time. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[11]

On February 19, 2010 Dr. Hurst discussed appellant's right hip and thigh pain and diagnosed a right hip sprain/strain, osteoarthritis of the right hip, lumbar sprain/strain and lumbar radiculopathy. In a form report of the same date, he opined that he could work six hours per day with restrictions. Dr. Hurst did not, however, address the cause of appellant's increased disability or relate it to his accepted work injury; thus his report is of little probative value.[12]

In a form report dated February 23, 2010, Dr. Hurst diagnosed a sprain of the right hip and lumbar spine and checked "yes" that the condition was caused or aggravated by employment. He recommended a six-hour workday. Dr. Hurst, however, provided no rationale for his opinion that appellant could no longer perform his full-time modified work. A medical report is of limited probative value on a given medical question if unsupported by medical rationale.[13]

On May 5, 2010 Dr. Todd discussed appellant's April 15, 2008 employment injury and diagnosed congenital stenosis at L3 to L5, a disc bulge with lateral recess narrowing and a lumbar sprain. He recommended a neurological evaluation as he could not explain why appellant's legs gave out after pushing objects. Dr. Todd found that his pain could be the result of a facet, muscle, disc or sacroiliac joint condition. He noted that appellant related that he had no problems prior to his work injury and that he "feels like he is disabled and not able to do his job. Dr. Todd informed him that he had preexisting disc degeneration and congenital stenosis that may have been exacerbated. He did not, however, provide an independent finding that appellant was disabled but instead merely described his belief that he was unable to perform his employment duties. A physician's report is of little probative value when it is based on a

[9] *See Jackie D. West, supra* note 6.

[10] A physician's assistant provided a narrative report on January 20, 2010. The reports of a physician's assistant, however, are entitled to no weight as a physician's assistant is not a "physician" as defined by section 8101(2) of FECA. *See* 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551 (2002).

[11] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[12] *See A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of little probative value on the issue of causal relationship); *Carol A. Lyles*, 57 ECAB 265 (2005) (whether a particular injury caused an employee disability from employment is a medical issue which must be resolved by competent medical evidence).

[13] *T.F.*, 58 ECAB 128 (2006); *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

claimant's belief rather than a doctor's independent judgment.[14] Further, Dr. Todd did not attribute any current condition to the accepted employment injury and thus his opinion is insufficient to meet appellant's burden of proof.

On August 4, 2010 Dr. Todd diagnosed congenital stenosis, lumbar sprain and disc bulges with lateral recess narrowing mainly at L3-L5. He noted that appellant related his symptoms to the work incident two years prior. Dr. Todd discussed his belief that he might be doing more than he should at work and that he "will discuss that at his work, and he will adjust that accordingly." He did not provide a fully-rationalized opinion regarding whether appellant was able to perform the duties of his full-time modified employment. As discussed, a physician's report is of little probative value when it is based on a claimant's belief rather than the doctor's independent judgment.[15] The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.[16]

On May 14, 2010 Dr. Simek noted that appellant experienced chronic right hip and back pain after he injured himself in 2008 pushing heavy containers at work. He diagnosed lumbosacral sprain/strain with persistent mechanical low back pain, symptoms of right lumbar radiculopathy and mild degenerative disc disease at L2 through L5 without significant neurocompressive lesions." Dr. Simek did not address the pertinent issue of whether appellant was partially disabled from his modified position beginning January 30, 2010; consequently, his report is of little probative value.

On appeal appellant argues that he experienced back pain after working more than six hours as a result of his April 15, 2008 employment injury. He asserts that Dr. Berend found that he could work only six hours per day. An award of compensation, however, may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.[17] Appellant must submit a physician's report in which the physician reviews those factors of employment identified by him as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.[18] He failed to submit such evidence and therefore failed to discharge his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP 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.

[14] *Earl David Seal*, 49 ECAB 152 (1997).

[15] *Id*.

[16] *See Sandra D. Pruitt*, 57 ECAB 126 (2005).

[17] *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[18] *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability on January 30, 2010 causally related to his April 15, 2008 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 10, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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