United States Department of Labor
Employees' Compensation Appeals Board

C.B., Appellant	)	
and	)	**Docket No. 11-854**
	)	**Issued: October 24, 2011**
U.S. POSTAL SERVICE, WESTCHESTER PERFORMANCE CLUSTER, White Plains, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 17, 2001 appellant filed a timely appeal from the September 16, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for a recurrence of disability. Pursuant to the Federal Employees' Compensation Act (FECA)[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 met her burden of proof to establish that she sustained a recurrence of disability on or after January 5, 2010 due to her November 16, 2009 employment injury.

[1] 20 C.F.R. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on November 16, 2009 appellant, then a 40-year-old city carrier, sustained a lumbar sprain and lumbar radiculopathy due to lifting a tub of mail.[2] She stopped work on November 16, 2009 and OWCP paid compensation for total disability. On December 3, 2009 appellant returned to full-time work in her regular job.

Appellant stopped work on January 5, 2010 and filed a claim alleging that she sustained a recurrence of disability due to her November 16, 2009 employment injury. She indicated that on January 5, 2010 she had the same type of low back pain that she had when she injured herself on November 16, 2009.

In a January 21, 2010 letter, OWCP advised appellant about the type of factual and medical evidence to submit in support of her recurrence of disability claim.

Appellant submitted several physical therapy evaluation reports and related administrative documents which were dated between November 2009 and February 2010. She also submitted reports from attending Board-certified orthopedic surgeons, a November 23, 2009 report of Dr. David Gonzalez and a December 1, 2009 report of Dr. Alok D. Sharan. In his December 1, 2009 report, Dr. Sharan advised appellant that she could return to full duty.

In a February 25, 2010 decision, OWCP denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after January 5, 2010 due to her November 16, 2009 employment injury.

Appellant requested reconsideration and provided additional medical evidence. In a January 25, 2010 report, Dr. Stanley Wainapel, an attending Board-certified physical medicine and rehabilitation physician, noted that appellant reported that she twisted her back while she was lifting mail into a truck on November 16, 2009. He indicated that she stopped work after the incident and returned to work in early December 2009. Appellant indicated that her back pain radiated down the backs of both legs to about the level of her thighs and knees and occasionally lower and that she experienced some numbness and tingling in her legs on an occasional basis. Dr. Wainapel stated that on examination appellant had significant tenderness in the right sacroiliac area and along the right lateral thigh. He diagnosed lower back pain with sciatica and signs suggestive of trochanteric bursitis of the right hip along with tightness of the muscles on her right side, including the piriformis, iliotibial band and psoas muscle. Dr. Wainapel stated that this condition is referred to as sacroiliac/trochanter/iliotibial band syndrome. He recommended that appellant continue taking anti-inflammatory medicine and participating in physical therapy. Dr. Wainapel indicated that appellant could not go back to her current type of work because it involved significant lifting.

[2] It appears that appellant reported having some low back pain prior to suffering her November 16, 2009 injury. In a September 1, 2009 report, Dr. Paul E. Levin, an attending Board-certified orthopedic surgeon, noted that she reported having low back pain without radiation for about a week. He noted that examination showed hypersensitivity around the spinous process from the T12 disc to the sacrum and diagnosed degenerative disc disease of the lumbar spine.

In a March 18, 2010 report, Dr. Wainapel indicated that appellant was first seen by him on January 25, 2010 because of back and leg pain following a work-related injury on November 16, 2009. He noted that he sent appellant for six weeks of physical therapy but this treatment did not produce consistent relief of her symptoms. Appellant's lower back pain increased when she sneezed which suggested a relation with increased intradiscal pressure that might indicate an annular tear or possible local lumbar disc herniation. Dr. Wainapel indicated that he wrote a prescription for Naprosyn pain medication and recommended lumbar spine x-rays as well as pelvis and hip x-rays to rule out sacroiliac or hip pathology. He also recommended magnetic resonance imaging (MRI) scan testing of the lumbar spine to rule out an annular tear or disc herniation and discontinued her physical therapy due to insufficient improvement. Dr. Wainapel indicated that appellant was unable to resume her normal work activities which entailed significant lifting and carrying.[3]

In a May 17, 2010 decision, OWCP affirmed its February 25, 2010 decision noting that Dr. Wainapel described a medical condition that was different from appellant's accepted medical conditions.

Appellant requested reconsideration and submitted another March 18, 2010 report in which Dr. Wainapel detailed the findings of her visit on that date. Dr. Wainapel indicated that appellant reported back and leg pain, somewhat more in her back than her thighs. He stated that on physical examination appellant exhibited hamstring tightness and back pain associated with straight leg raising, but no clear radicular component. Dr. Wainapel noted that she had some tightness around the piriformis muscle, more on the left side than the right, and indicated that she had some psoas tightness, left greater than right, even though she had physical therapy to stretch these muscles. Appellant's motor examination was within normal limits and she was tender over her sacroiliac joints and her lumbosacral junction. Dr. Wainapel stated that she could not perform her regular job, but could perform lighter duty that did not require the same degree of lifting and carrying.

In an April 19, 2010 report, Dr. Wainapel stated that appellant had an x-ray of her lumbosacral spine and pelvis/hips which showed minimal spondylosis deformans of the lumbar spine and no abnormalities of the sacroiliac joints or the hips. Appellant still reported back pain which radiated into her thighs. Her physical examination showed no significant radicular signs, but there was pain associated with facet loading bilaterally. Dr. Wainapel noted that lumbar lordosis was increased and did not fully reverse with forward flexion, abdominal tone was lax and there was tenderness in the area around the episacral region which might represent a painful episacral fat pad. He recommended that appellant use some type of lumbosacral brace and posited that, if her use of a brace produced increased tolerance for standing and lifting, she might be in a position to consider returning to work while wearing the brace.

On June 11, 2010 Dr. Wainapel stated that appellant was awaiting approval for a corticosteroid injection to the left episacral trigger point area. He felt that this trigger point area was a major contributor to her symptoms of pain, going down the left leg, since he was able to reproduce much of her symptomatology by pushing on the trigger point area. Dr. Wainapel

[3] Appellant also submitted additional documents relating to her physical therapy.

indicated that appellant was wearing a lumbar brace, but she still had her symptoms, perhaps because of the episacral trigger point area. He stated that once she had her corticosteroid injection to this localized trigger point area, he expected that many of her symptoms in her left leg would improve and she might be capable of returning to full duty. Dr. Wainapel stated:

> "In reviewing [appellant's] history, the onset of symptoms on November 16, 2010 in association with her work seems causal in nature. She has benefited from therapy in the past with regard to some of the original symptoms that included right-sided thigh and buttock pain. I had referred to this as the sacroiliac/trochanter/iliotibial band syndrome which again is, in my medical opinion, causally related to her work injury on November 16, 2009."

In a July 22, 2010 report, Dr. Wainapel stated that appellant complained of tenderness in the episacral region and pain radiating from her back down her left thigh to the posterior portion of her left knee. On physical examination, appellant had some swelling in the popliteal fossa on the left side which was tender to touch. Dr. Wainapel indicated that knee flexion increased her discomfort, hip motion was relatively preserved and straight leg raising testing was only associated with back pain. Previous symptoms of right trochanteric bursitis had resolved with therapy. Dr. Wainapel stated that the question that needed to be clarified is whether or not appellant had a popliteal cyst in the left knee which is producing her left leg pain or whether the pain was also contributed to by any lumbosacral radiculopathy. Appellant had some x-rays of her lumbosacral spine and left knee which were basically within normal limits except for some very minimal spondylosis of the lumbar spine and the x-rays of her hips and pelvis showed normal findings. Dr. Wainapel indicated that she was disabled from her regular work and recommended MRI scan testing of her left knee and lumbosacral spine.

In a September 16, 2010 decision, OWCP affirmed its May 17, 2010 decision.

LEGAL PRECEDENT

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.[4] This burden includes the necessity of furnishing 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 sound medical rationale.[5] Where no such rationale is present, medical evidence is of diminished probative value.[6]

[4] *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

[5] *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[6] *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

ANALYSIS

OWCP accepted that on November 16, 2009 appellant sustained a lumbar sprain and lumbar radiculopathy due to lifting a tub of mail. Appellant stopped work on November 16, 2009 and on December 3, 2009 she returned to full-time work in her regular job. She stopped work on January 5, 2010 and filed a claim alleging that she sustained a recurrence of disability due to her November 16, 2009 employment injury.

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after January 5, 2010 due to her November 16, 2009 employment injury.

In the January 25, 2010 report, Dr. Wainapel, an attending Board-certified physical medicine and rehabilitation physician, noted that on examination appellant had significant tenderness in the right sacroiliac area and along the right lateral thigh. He diagnosed lower back pain with sciatica and signs suggestive of trochanteric bursitis of the right hip along with tightness of the muscles on her right side, including the piriformis, iliotibial band and psoas muscle (a condition known as sacroiliac/trochanter/iliotibial band syndrome). Dr. Wainapel indicated that appellant could not go back to her current type of work because it involved significant lifting. In his June 11, 2010 report, he stated that, after reviewing her history, "the onset of her symptoms on November 16, 2010 in association with her work seems causal in nature." Dr. Wainapel noted that appellant benefited from physical therapy with regard to some of the original symptoms that included right-sided thigh and buttock pain. He stated, "I had referred to this as the sacroiliac/trochanter/iliotibial band syndrome which again is, in my medical opinion, causally related to her work injury on November 16, 2009."

The Board finds that Dr. Wainapel's opinion on causal relationship is of limited probative value because he did not provide adequate medical rationale in support of his opinion. Appellant's claim was accepted for a low back sprain which caused a lumbar radiculopathy. Dr. Wainapel describes a very different type of injury when he discusses his observation of bursitis in appellant right sacroiliac, trochanter and iliotibial regions. This observed condition involves a different area than appellant's accepted conditions and represents a different physiological process, *i.e.*, an inflammation process of the bursa versus a muscle sprain. Dr. Wainapel did not provide any notable discussion of appellant's accepted conditions or explain how the condition he observed beginning in January 2010 could have been related to these accepted conditions.

In other reports, Dr. Wainapel described other symptoms and conditions that arose after January 2010. He continued to find that appellant was either partially or totally disabled. However, Dr. Wainapel did not provide any opinion that these conditions were related to the accepted employment conditions and the medical evidence of record does not otherwise establish such a causal relationship. For example, in his April 19, 2010 report, Dr. Wainapel indicated that appellant had tenderness in the area around her episacral region which might represent a painful episacral fat pad. In his June 11, 2010 report, he noted that he had found a left episacral trigger point area which might be a major contributor to the pain that went down the left leg. On July 22, 2010 Dr. Wainapel stated that appellant had some swelling in the popliteal fossa on the

left side which might be a popliteal cyst producing her left leg pain.[7] He did not provide any opinion that these conditions were related to the accepted employment conditions or that they caused a work-related recurrence of disability.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.[8] Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability is causally related to the accepted employment injury and, therefore, OWCP properly denied her claim for compensation.

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.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on or after January 5, 2010 due to her November 16, 2009 employment injury.

[7] It should be noted that, in his July 22, 2010 report, Dr. Wainapel indicated that appellant's previous symptoms of right trochanteric bursitis had resolved with therapy.

[8] *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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