United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	**Docket No. 11-1617**
	)	**Issued: April 2, 2012**
DEPARTMENT OF THE INTERIOR, FISH & WILDLIFE SERVICE, Elkins, WV, 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 July 5, 2011 appellant, through her attorney, filed a timely appeal from a June 6, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her request to expand her claim.[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) 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 her claim should be expanded to include sacroiliac joint instability and left pelvis joint pain.

[1] The June 6, 2011 decision purported to be a nonmerit decision. The Board, however, finds that it constitutes a merit decision as OWCP weighed the probative value of the evidence.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 20, 2006 appellant, then a 28-year-old fish and wildlife biologist, filed a traumatic injury claim alleging that on January 27, 2006 she injured her left hip, lower back and left shoulder when she fell down a slope. OWCP accepted the claim for left hip strain, thoracic strain and lumbar strain.[3]

On July 10, 2008 Dr. Gary S. Gruen, an attending Board-certified orthopedic surgeon, diagnosed chronic left S1 joint instability.[4] On February 25, 2009 OWCP authorized a magnetic resonance imaging (MRI) scan study of the S1 joints or further x-ray studies to determine if appellant had S1 joint instability.

Dr. Charles A. Lefebure, a Board-certified orthopedic surgeon and second opinion examiner, evaluated appellant on October 14, 2008 to determine the relationship between her current condition and disability and her work injury. He discussed Dr. Gruen's finding of pelvic instability and found that the diagnosis was "difficult to confirm by laboratory procedures thus performed." Dr. Lefebure recommended additional diagnostic studies to see if she had an S1 joint condition as he was unable to determine what specific treatment measures were warranted.

In a report dated March 19, 2009, Dr. Gruen noted that appellant had experienced sacroiliac joint instability subsequent to a fall at work on January 27, 2006. He related that x-rays were "indeterminate for sacroiliac joint instability which is not uncommon." Dr. Gruen recommended physical therapy. On March 20, 2009 he stated:

> "I am a specialist in sacroiliac joint instability and pelvic pain and have written many papers regarding the subject of sacroiliac joint instability. Through thorough research I have found that both an MRI [scan] and repeat stress x-rays also known as stork views of the sacroiliac joint have been unable to accurately diagnose sacroiliac joint instability…. In my examinations of [appellant], it is within a reasonable degree of medical certainty that I have diagnosed her with sacroiliac joint instability despite the negative stress views that she has had on her sacroiliac joints."

In a report dated September 11, 2009, Dr. Philip J. Chua, an osteopath, discussed his diagnoses of left hip strain, thoracic strain and lumbar strain due to appellant's January 27, 2006 employment injury. He advised that diagnostic testing by other physicians revealed left sacroiliac joint instability and left pelvis joint pain. Dr. Chua attributed the left sacroiliac joint instability, thoracic strain and left pelvis joint pain to the January 27, 2006 work injury and requested that OWCP expand acceptance of appellant's claim to include these conditions. He

[3] In decisions dated August 1 and December 15, 2006, OWCP denied appellant's claim for continuation of pay as she did not report the injury on an approved form within 30 days.

[4] In a decision dated December 15, 2006, OWCP denied appellant's claim for intermittent time lost from work August 11 to September 6, 2006. On April 23, 2007 it denied her request for compensation due to disability on September 20, 2006. By decision dated December 17, 2007, OWCP denied modification of the December 15, 2006 and April 23, 2007 decisions. On February 20, 2008 it found that appellant had not established a recurrence of disability beginning December 29, 2007 due to her accepted employment injury.

recommended physical therapy "to strengthen the pelvis muscles with a therapist who specializes in sacroiliac joint instability."

On December 10, 2009 OWCP's medical adviser reviewed the evidence of record and found no objective evidence of S1 joint instability. He opined that her physicians had not supported their diagnosis of joint instability with either diagnostic or clinical evidence and stated, "The claimant's S1 joint pain is well established and is related to the accepted conditions in this case (as is left hip pain) however, there is no objective evidence for S1 joint instability in this case."

On December 15, 2009 OWCP informed Dr. Chua that it was denying his request for expansion of the case to include left sacroiliac joint instability and left pelvis joint pain. In an undated response received on February 22, 2010, Dr. Chua reviewed the December 10, 2009 opinion of OWCP's medical adviser. He advised that S1 joint instability could be made using clinical findings rather than diagnostic studies. Dr. Chua disagreed with the medical adviser's conclusions and noted that he did not explain why physical therapy would not be helpful.

On February 27, 2010 a second OWCP medical adviser reviewed the medical evidence. He opined that the accepted conditions should not "be expanded to include S1 joint disease because there is no objective evidence that S1 joint disease exists." The medical adviser stated, "The most common causes of S1 joint disease are two conditions, neither of which has been demonstrated in this claimant. The first is ankylosing spondylitis and the second is rheumatoid arthritis, and the claimant has neither one of these conditions." The medical adviser attributed appellant's sacroiliac joint pain to probable left hip or low back radiculopathy.

By decision dated March 2, 2010, OWCP denied expansion of appellant's claim to include sacroiliac joint instability and left pelvis joint pain.

On March 1, 2011 appellant requested reconsideration. She asserted that OWCP's medical adviser did not consider Dr. Gruen's March 20, 2009 report. Appellant reviewed the medical evidence and questioned the findings in the medical adviser's reports. She maintained that she required additional physical therapy to reach maximum medical improvement. Appellant also submitted a report dated April 27, 2011, in which Dr. Chua diagnosed pelvic joint pain and indicated that appellant was waiting for authorization to get physical therapy.

By decision dated June 6, 2011, OWCP denied modification of its March 2, 2010 decision. It found that the newly submitted evidence was insufficient to outweigh the opinions that her claim should not be expanded to include sacroiliac joint disease, and added that there was "no objective evidence either radiologically or clinically that there is S1 joint disease."[5]

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a

[5] OWCP discussed the October 14, 2008 report from Dr. Lefebure.

specific employment incident or to specific conditions of employment.[6] Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[7] Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[8] The opinion of the physician must be based on a complete factual and medical background of the claimant,[9] must be one of reasonable medical certainty[10] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[11]

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[12] The implementing regulations states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[13]

ANALYSIS

OWCP accepted that appellant sustained left hip strain, thoracic strain and lumbar strain due to a January 27, 2006 employment injury. Appellant requested expansion of her claim to include sacroiliac joint instability and left pelvis joint pain.

On July 10, 2008 Dr. Gruen diagnosed chronic left S1 instability. OWCP informed him that he could obtain further diagnostic testing to confirm the diagnosis. In a March 20, 2009 response, Dr. Gruen related that x-rays and MRI scan studies could not accurately diagnose instability of the sacroiliac joint. He asserted that appellant had sacroiliac joint instability even though she had "negative stress views."

On September 11, 2009 Dr. Chua diagnosed left sacroiliac joint instability and left pelvis joint pain due to appellant's January 27, 2006 employment injury. OWCP's medical adviser reviewed the evidence on December 10, 2009 and determined that appellant had S1 joint pain

[6] *See Katherine J. Friday*, 47 ECAB 591 (1996).

[7] *John J. Montoya*, 54 ECAB 306 (2003).

[8] *Leslie C. Moore*, 52 ECAB 132 (2000).

[9] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[10] *John W. Montoya*, *supra* note 7.

[11] *Judy C. Rogers*, 54 ECAB 693 (2003).

[12] 5 U.S.C. § 8123(a).

[13] 20 C.F.R. § 10.321.

due to her accepted work injury but no objective evidence of S1 joint instability. In a February 22, 2009 response, Dr. Chua asserted that a diagnosis of S1 joint instability did not have to be based on diagnostic studies. On February 27, 2010 another OWCP medical adviser related that appellant's sacroiliac joint pain probably was radiating from either her hip or low back and advised against expanding her claim to include S1 joint instability.

The Board finds that a conflict exists between Dr. Gruen and Dr. Chua, appellant's attending physicians, and OWCP's medical advisers regarding whether she sustained sacroiliac joint instability due to her accepted work injury. Section 8123 of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the employee's physician, OWCP shall appoint a third physician, who shall make an examination.[14] The case will therefore be remanded for an impartial medical examiner to resolve the conflict in medical opinion and determine whether appellant's claim should be expanded to include sacroiliac joint instability. Following this and such further development a deemed necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

[14] 5 U.S.C. § 8123; *see Y.A.*, 59 ECAB 701 (2008).

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: April 2, 2012
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