

FACTUAL HISTORY

On September 24, 2009 appellant, then a 55-year-old heavy mobile equipment mechanic, filed a traumatic injury claim alleging that on September 22, 2009 he hurt his right and left hip while changing a tire on a grader at work.

In an October 3, 2009 medical report, Dr. Matthew K. Bailey, an attending Board-certified orthopedic surgeon, listed findings on physical and x-ray examination. He diagnosed a contusion to the greater trochanter right hip and possible mild L5 radiculopathy. In an October 7, 2009 report, Dr. Bailey advised that appellant had a contusion and bursitis of the right hip caused or aggravated by the September 22, 2009 incident. On November 11, 2009 he reported that appellant performed full work duties with no difficulty. Dr. Bailey listed physical examination findings and advised that appellant was doing well status post contusion of the right lateral hip. He anticipated a full recovery without disability or impairment.

On January 26, 2012 appellant filed a claim for a recurrence of disability related to his September 22, 2009 injury. He did not stop work and listed the date of the recurrence as July 3, 2011. Appellant stated that, following his return to work after the original injury, he had soreness with numbness in his right hip and back of his right leg when he sat for long periods of time, usually while driving. He alleged that on July 3, 2011 he felt a sharp and numbing pain in his right hip and back of his right leg above the knee which traveled down his leg to above his ankle while he was driving for about one hour on vacation. After appellant got out of the vehicle and walked around for a few minutes, the numbness subsided. Thereafter, he continued to experience numbness and in December 2011 it started after only driving for one-half hour.

By letter dated February 8, 2012, OWCP accepted appellant's claim for a contusion of the right hip. With regard to his recurrence claim, it also requested on February 8, 2012 that he submit medical evidence, including a rationalized medical opinion from an attending physician explaining the causal relationship between his current condition and the accepted employment injury. Appellant was allotted 30 days to submit the requested evidence. He did not respond.

In a March 13, 2012 decision, OWCP denied appellant's recurrence claim. The medical evidence of record was found insufficient to establish that his current right hip condition was causally related to his accepted September 22, 2009 employment-related injury.

On April 12, 2012 appellant requested reconsideration.

In a March 12, 2012 report, Dr. Bailey stated that he last saw appellant in 2009. Appellant related to him that since that time he had a persistent ache in his right hip which started about one-year ago, mainly while he was driving. He also developed pain along the posterior thigh into the lateral hip that occasionally radiated down to his lateral ankle. Appellant had no numbness, tingling or difficulty with sleeping. His driving tolerance decreased from 1 hour to 20 minutes when he was bothered by pain. Appellant's pain was relieved after he got out of the car and moved around. Dr. Bailey related that his medical history was unchanged. He listed findings on physical examination and advised that appellant's persistent right hip problems since 2009 "sounds most consistent with some sciatic nerve irritation when driving."

In a June 20, 2012 decision, OWCP denied modification of the February 8, 2012 decision. The medical evidence was insufficient to establish that appellant sustained a recurrence of his accepted September 22, 2009 employment-related injury.

LEGAL PRECEDENT

Section 8103(a) of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.² OWCP must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to effect the purposes specified in FECA.³ The only limitation on OWCP's authority is that of reasonableness.⁴

A recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment.⁵

To establish a recurrence of medical condition, a claimant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the claimed condition is causally related to the employment injury, and who supports that conclusion with sound medical rationale. Where no such rationale is present, the medical evidence is of diminished probative value.⁶

OWCP procedures state that, after 90 days of release from medical care (as stated by the physician or computed from the date of the last examination or the physician's instruction to return as needed), a claimant is responsible for submitting an attending physician's report that contains a description of the objective findings and supports a causal relationship between the claimant's current condition and the accepted condition. The medical evidence on causal relationship should be as conclusive as the evidence required to establish the original claim.⁷

² 5 U.S.C. § 8103(a).

³ See *Marjorie S. Geer*, 39 ECAB 1099 (1988) (OWCP has broad discretionary authority in the administration of FECA and must exercise that discretion to achieve the objectives of section 8103).

⁴ *Daniel J. Perea*, 42 ECAB 214 (1990).

⁵ 20 C.F.R. § 10.5(y).

⁶ *T.Y.*, Docket No. 12-393 (issued August 3, 2012).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5.b (May 2003).

ANALYSIS

Following his September 22, 2009 employment injury, appellant returned to his regular work duties. He alleged, however, that he suffered a recurrence on July 3, 2011. As appellant did not stop work or claim compensation for wage loss, his claim is in the nature of a recurrence of a medical condition. He thus has the burden of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition for which he seeks compensation beginning July 3, 2011 is causally related to the September 22, 2009 employment injury and who supports that conclusion with sound medical rationale.

Appellant has submitted no such medical opinion evidence. Dr. Bailey's March 12, 2012 report found that appellant's persistent right hip problems since 2009 "sounds most consistent" with sciatic nerve irritation while driving. He did not specifically attribute his current right hip condition to the accepted September 22, 2009 employment injury. Further, Dr. Bailey's opinion that appellant's ongoing right hip problems "sounds most consistent" with sciatic nerve irritation is speculative in nature.⁸ For the stated reasons, the Board finds that his report is of little probative value on the issue of causal relationship and is insufficient to establish appellant's recurrence claim.

The record contains no other medical evidence that attempts to explain the connection, if any, between appellant's diagnosis in 2012 and what happened at work in 2009.

As the medical opinion evidence fails to establish that appellant sustained a recurrence of medical condition on July 3, 2011 causally related to his September 22, 2009 employment injury, the Board finds that he has not met 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.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of medical condition on July 3, 2011 causally related to his September 22, 2009 employment-related injury.

⁸ Medical opinions that are speculative or equivocal in character are of little probative value. See *Kathy A. Kelley*, 55 ECAB 206 (2004).

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 18, 2013
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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