United States Department of Labor
Employees' Compensation Appeals Board

B.G., Appellant	)	
and	)	**Docket No. 14-439**
	)	**Issued: August 7, 2014**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Pittsburgh, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 9, 2013 appellant filed a timely appeal from a November 25, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record also contains a June 27, 2013 decision denying appellant's March 23, 2013 recurrence claim. On July 2, 2013 appellant's attorney requested a hearing of the June 27, 2013 recurrence decision. Because the Board and OWCP cannot share jurisdiction over the same case over the same issue, the only issue being considered on appeal is the denial of authorization of physical therapy treatment. The subsequent decision by the hearing representative dated February 4, 2014, will not be disturbed as it reviews a different issue. *See* 20 C.F.R. § 501.2(c)(3); *Leon Hayes*, Docket No. 94-2292 (issued January 15, 1997).

ISSUE

The issue is whether OWCP abused its discretion by denying authorization for physical therapy treatment.

FACTUAL HISTORY

This case was previously before the Board.[3] By decision dated March 21, 2014, the Board affirmed the September 24, 2013 decision which terminated appellant's wage-loss compensation and medical benefits on the grounds that she no longer had any residuals or disability causally related to her accepted October 25, 2012 employment-related injury. The Board found that the weight of the medical evidence rested with the April 29, 2013 second opinion report of Dr. Scott J. Szabo, a Board-certified orthopedic surgeon. The facts of the case, as set out in the Board's prior decision, are hereby incorporated by reference.

The relevant facts of the case are as follows: on October 25, 2012 appellant, then a 36-year-old nursing assistant, filed a traumatic injury claim alleging that she sustained a left hip injury in the performance of duty when she was pinned to a wall by an electronic wheelchair. Her claim was accepted for left hip contusion and left inguinal strain. Although, appellant was released to full duty on November 19, 2012, she did not return to limited duty on November 25, 2012.

In reports dated November 5, 12 and 19, 2012, Dr. Walter Hoover, Board-certified in internal and occupational medicine, noted that appellant was a nurse's aide with a left hip contusion and inguinal strain. He stated that she worked modified duty and only noticed some discomfort in the left hip with palpation. Upon examination, Dr. Hoover observed some tenderness to palpation of the left hip area. Range of motion of the hip was satisfactory. Dr. Hoover diagnosed resolving left hip contusion and inguinal strain. He recommended that appellant continue with ibuprofen and physical therapy.

Appellant underwent various forms of physical therapy treatments from November 8 to 22, 2012.

On December 4, 2012 Dr. Hoover requested that OWCP authorize treatment for physical therapy. On December 26, 2012 he prescribed physical therapy three times a week. Dr. Hoover continued to request authorization for physical therapy until March 22, 2013.

In January 3 to 31, 2013 reports, Dr. Hoover related appellant's complaints of recurrent left groin pain and left hip discomfort. Examination revealed tenderness to palpation of the left hip and trochanteric bursa area and pain with flexion of the hip. Dr. Hoover diagnosed left trochanteric bursitis and groin pain. He recommended that appellant continue with ibuprofen and Vicodin as needed and start physical therapy.

In February 7, 14 and 21, 2013 reports, Dr. Hoover stated that appellant had been off work for the past week due to left trochanteric bursitis and groin pain and that her symptoms had

[3] Docket No. 14-6 (issued March 21, 2014).

improved somewhat. He related that she was doing some range of motion exercises and was waiting to start physical therapy. Upon examination, Dr. Hoover observed significant tenderness to palpation of the left trochanteric bursa and inguinal crease. Appellant's gait was mildly antalgic and she had some discomfort with squatting and flexing at the waist. Dr. Hoover recommended that appellant continue off work and await scheduling of physical therapy treatment.

Appellant underwent physical therapy treatments from March 1 to 20, 2013. The record does not indicate whether these treatments were authorized by OWCP.

In medical reports dated March 7 to 27, 2013, Dr. Hoover noted that appellant was a nurse's aide with left trochanteric bursitis and groin pain. Upon examination, he observed some tenderness to palpation of the lateral aspect of the left thigh, mild pain and discomfort with abduction of the left hip, and mild tenderness of the trochanteric bursa area and the left groin. Appellant had some difficulty squatting. Range of motion of the lumbar spine was satisfactory. Dr. Hoover diagnosed left trochanteric bursitis and groin pain improving and left sacroiliac (SI) joint discomfort.

In a March 22, 2013 letter, appellant stated that she had left hip contusion and hip sprain, as approved by OWCP, but alleged that she also had left sciatica, left foot paresthesia and left great trochanter bursitis as a result of the October 25, 2012 employment injury. She reported that she returned to full duty on November 19, 2012 and worked a total of four days before she returned to the emergency room. Appellant was informed that she was not completely healed from the initial injury and allowed to go back to work with restrictions. She stated that several scripts were written for physical therapy and forms were faxed to OWCP but her requests were not approved. Appellant noted that she was enclosing more medical records from her doctor to prove that her left hip problems were a result of the October 25, 2012 employment injury.

In an April 8, 2013 report, Dr. Hoover related appellant's complaints of increased pain and discomfort in the left buttock, thigh, and groin area with strenuous pushing and pulling. He noted no increase in symptoms with standing or walking. Appellant reported that she had not been able to go to physical therapy. Upon examination, Dr. Hoover observed mild tenderness to palpation of the left buttock and lateral aspect of the thigh and anterior aspect of the thigh. Appellant's gait was normal and she was able to squat with some difficulty. Range of motion of the lumbar spine was satisfactory. Dr. Hoover diagnosed left trochanteric bursitis and aggravated groin pain. He recommended that appellant return to modified duty with limited pushing and pulling.

OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Scott J. Szabo, a Board-certified orthopedic surgeon, for a second opinion examination to determine the extent of her continuing employment-related residuals and disability. In an April 29, 2013 report, Dr. Szabo provided an accurate history of injury of the October 25, 2012 employment injury and reviewed her history, including the statement of accepted facts. He noted that a December 21, 2012 MRI scan of the left hip showed no abnormal signal within the bone marrow, no joint effusion and some increased signal change adjacent to the greater trochanter of the left hip which may be indicative of bursitis. Dr. Szabo related appellant's complaints of left anterior groin pain that radiated into the lateral aspect to her SI

joint and anterior into her knee, calf and foot. Appellant stated that she felt capable of lifting 15 pounds to her waist, sitting for 45 minutes, standing for an hour and walking.

Upon examination, Dr. Szabo observed normal gait and ability to walk on her heels and toes. He also noted tenderness overlying the left SI joint, greater trochanteric region but nontender over the anterosuperior and anterior inferior iliac crests and hip adductors. Seated and supine straight leg raise testing was negative. Appellant also had negative Faber testing and nontender to pelvic compression and roll maneuvers. She demonstrated 5/5 hip flexion, hip extension and hip adduction. Dr. Szabo reported that each hip demonstrated 30 degrees of internal and external rotation as well as 120 degrees flexion. Provocative maneuvers to test the hip labrum were unremarkable. Dr. Szabo noted that ancillary testing on April 29, 2013 were performed and demonstrated normal acetabular morphology without hip dysplasia, spherical femoral heads, normal appearing hip joints, no abnormal calcifications, normal appearing SI joints and no abnormal mineralization about the pelvis. He diagnosed left hip contusion and inguinal strain. Dr. Szabo stated that these diagnoses appeared to be a direct cause of the vocational injury of October 25, 2012 as opposed to an aggravation, participation or acceleration. He explained that the physical examination and review of imaging did not demonstrate evidence of residuals from the injury or impairment. Dr. Szabo reported that appellant's subjective complaints were not substantiated by objective findings. He opined that appellant had recovered from the vocational injury and required no restrictions, limitations or treatment. Dr. Szabo concluded that there were no other nonaccepted conditions causally related to the October 25, 2012 employment injury.

Appellant continued to request physical therapy three times a week for three to four weeks from April 10 to June 25, 2013.

In a June 13 and July 11, 2013 reports, Dr. Hoover noted improvement in appellant's leg symptoms but reported that she still complained of episodes of pain in her left groin area and in the lower back area. Appellant also related increased discomfort with standing or walking, relieved with sitting down for a short period of time. Upon examination, Dr. Hoover observed tenderness to palpation of the left paralumbar buttock area into the lateral aspect of the thigh. Range of motion of the lumbar spine was satisfactory with some discomfort at the extreme. Dr. Hoover diagnosed left trochanteric bursitis improved and possible sacroiliac dysfunction changed. He recommended that appellant continue with the ibuprofen as needed and remain on modified duty.

In a decision dated August 1, 2013, OWCP denied authorization for physical therapy treatments finding that the medical evidence failed to establish that such additional treatment was reasonable and medically necessary for her accepted work injury. It relied on the April 29, 2013 report of Dr. Szabo, the second opinion examiner, which found that appellant no longer suffered residuals of the October 25, 2012 employment injury and did not need any further medical treatment.

In an appeal request form dated August 22, 2013 and received on August 27, 2013, appellant requested reconsideration.

In an August 8, 2013 report, Dr. Hoover stated that appellant's left trochanteric bursitis and left-sided lower back pain continued to improve. He related that appellant felt she was able to return to regular-duty work. Upon examination, Dr. Hoover observed no tenderness to palpation of the left trochanteric bursa or lower back. Range of motion of the lumbar spine was normal. Dr. Hoover diagnosed left trochanteric bursitis and sacroiliac dysfunction, resolving. He recommended that appellant continue to use ibuprofen as needed and authorized her to resume regular-duty work.

By decision dated November 25, 2013, OWCP denied modification of the August 1, 2013 decision. It determined that the new medical evidence was not sufficient to outweigh the opinion of the second opinion examiner, Dr. Szabo.

LEGAL PRECEDENT

Section 8103(a) of FECA provides for the furnishing of services, appliances, and supplies prescribed or recommended by a qualified physician which OWCP, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening in the amount of monthly compensation.[4] In interpreting the section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.[5] OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP's authority is that of reasonableness.[6]

Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.[7]

Section 8124(a) of FECA further provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.[8] Its regulations also state that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.[9] The reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.[10]

[4] 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

[5] *W.T.*, Docket No. 08-812 (issued April 3, 2009); *A.O.*, Docket No. 08-580 (issued January 28, 2009).

[6] *D.C.*, 58 ECAB 629 (2007); *Mira R. Adams*, 48 ECAB 504 (1997).

[7] *See M.O.*, Docket No. 13-1822 (issued November 26, 2013).

[8] 5 U.S.C. § 8124(a); *see Hubert Jones, Jr.*, 57 ECAB 467 (2006); *Paul M. Colosi*, 56 ECAB 294 (2005).

[9] 20 C.F.R. § 10.126. *See also O.R.*, 59 ECAB 432 (2008); *Teresa A. Ripley*, 56 ECAB 528 (2005); *M.L.*, Docket No. 09-956 (issued April 15, 2010).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5(b) (November 2012).

ANALYSIS

OWCP accepted appellant's claim for left hip contusion and hip strain. Appellant received medical treatment, including various forms of physical therapy beginning November 8, 2012. On December 26, 2012 Dr. Hoover prescribed physical therapy three times a week. He submitted various requests for authorization for continued physical therapy. By decisions dated August 1 and November 25, 2013, OWCP denied appellant's request for physical therapy based on the April 29, 2013 report of Dr. Szabo, the second opinion examiner, who determined that appellant no longer suffered residuals of her accepted injury and required no work restrictions, limitations or medical treatment.

The Board finds that OWCP failed to properly explain its findings in the November 25, 2013 decision with respect to the dates of physical therapy for which OWCP denied authorization. FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.[11] In its November 25, 2013 decision, OWCP merely stated that medical evidence failed to establish that continued physical therapy was reasonable and medically necessary for her accepted work injury based on the April 29, 2013 second opinion report of Dr. Szabo. It, however, failed to address appellant's requests for physical therapy treatment for the period prior to the April 29, 2013 second opinion report. The record reveals that appellant, through her physician, Dr. Hoover, requested authorization for physical therapy beginning December 4, 2012 and provided various medical reports regarding her treatment for the October 25, 2012 employment injury. In his April 29, 2013 report, Dr. Szabo determined that appellant no longer suffered residuals of the October 25, 2012 employment injury and accordingly, OWCP should not authorize continued medical treatment. OWCP relied on his medical opinion when it denied authorization for physical therapy. It is unclear, however, the dates of physical therapy treatment for which OWCP was denying authorization. Dr. Szabo did not address whether continued medical treatment was necessary for appellant's accepted conditions prior to the April 29, 2013 second opinion report. OWCP in its November 25, 2013 decision did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the basis for the decision of denying authorization for physical therapy treatments.

The case must be remanded to OWCP for a proper decision which includes findings of fact and a clear and precise statement regarding the basis for the decision. Following such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that OWCP did not properly exercise its discretion in denying authorization for physical therapy treatment.

[11] *Supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the November 25, 2013 merit decision of the Office of Workers' Compensation Programs is set aside and remanded for further proceedings consistent with this decision of the Board.

Issued: August 7, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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