United States Department of Labor
Employees' Compensation Appeals Board

C.L., Appellant	)	
and	)	**Docket No. 14-1585**
	)	**Issued: December 16, 2014**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Biloxi, MS, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 8, 2014 appellant filed a timely appeal from a January 9, 2014 merit decision and a June 18, 2014 nonmerit 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.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish a right groin injury causally related to factors of her employment; and (2) whether OWPC properly denied appellant's May 20, 2014 reconsideration request under 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 14, 2013 appellant, then a 50-year-old health technician, filed an occupational disease claim alleging pain in the groin area and adductor muscle of the inner thigh on the right leg as a result of her employment duties of examining veterans and taking notes on a computer. She reported that she did not file her claim with the employing establishment within 30 days because the pain started slowly and did not become a real problem until six weeks had passed. Appellant first became aware of her condition on October 29, 2012 and realized it resulted from her employment on November 26, 2012.

By letter dated February 20, 2013, OWCP advised appellant that no evidence was received in support of her claim. It requested that she provide a detailed description of the employment-related activities she believed contributed to her condition and a medical report establishing that she sustained a diagnosed condition as a result of her alleged employment duties.

Appellant submitted several forms from her employing establishment, including a February 8, 2013 incident report, noting an injury to her groin area due to desk configuration and location and a receipt of information for work-related injuries which noted that she sustained a "groin pull" on October 29, 2012.

In a March 6, 2013 letter, appellant stated that as a health technician in the prosthetics department for the past four years she examined veterans for diabetic shoes, foot orthotics, and compression hose. Her duties required her to visually examine and palpate the veteran's foot and record her notes in the computer system. Because appellant's keyboard was on an adjustable tray over her desk top, she had to raise her chair height until her heels were off the floor to use the keyboard. She then spun her chair around in order to face the veteran behind her, which required her to push with her toes and engage her inner thigh muscles, and lower her chair height back to its lowest position to examine the veteran's feet. When the examination was over appellant pushed off her right leg, engaged her right inner thigh muscle in order to spin back around to the computer, and raised her chair again to keyboard height. She stated that the number of times per day that she performed this motion had varied over the last four years, but she estimated that she performed these various motions about two to five times per visit. Appellant speculated that, at the beginning of 2012, she saw 25 patients a day, two to three days a week. Since July 2012, she treated 15 patients a day for five days a week or approximately 150 to 375 times per week. Appellant alleged that the repeated body mechanics required to do her job caused increased pain to the interior portion of her right leg which lessened over the weekend and sometimes at night. Her activities of daily living outside of work included housekeeping, cooking, laundry, shopping on the weekends, and occasionally walking a mile on her treadmill.

In a March 7, 2013 statement, B. Christine Pelland, Chief of Prosthetic and Sensory Aids at the employing establishment, reported that she concurred with appellant's first paragraph that she examined and measured veterans' feet and legs for diabetic footwear and compression socks. Ms. Pelland noted that they had requested an ergonomic review of appellant's workstation.

In a decision dated March 26, 2013, OWCP denied appellant's claim. It accepted that she worked as a health technician but denied her claim finding insufficient medical evidence to establish that she sustained a diagnosed condition as a result of her injury.

Appellant requested a review of the written record on April 10, 2013. She stated that she was submitting partial documentation because she had to wait to see her general practitioner for x-rays and physical therapy. Appellant noted that she was also waiting to see a physiatrist. She submitted various physical therapy treatment notes dated March 8 to 20, 2013.

In an April 4, 2013 new patient evaluation report, Jacqueline York, a physician's assistant, related appellant's complaints of right groin pain for the past three to five months. Appellant noted no history of injury but stated that she did have repetitive motion at work where she sat in her chair and twisted around from her desk to the patient chairs and back. Ms. York reviewed appellant's history and noted that x-rays of the hip and pelvis demonstrated sacroiliac joint and mild bilateral hip space narrowing. She reported that any attempt at rotation of the right hip, especially adduction, exacerbated appellant's symptoms. Ms. York diagnosed right hip pain, possibly multifactorial, and lumbar spondylosis.

In an April 5, 2013 magnetic resonance imaging (MRI) scan of the lumbar spine, Dr. Eric F. Mutz, a Board-certified diagnostic radiologist, noted appellant's history of right leg pain since January 2013 from pushing back from tables. He reported mild disc degeneration at the L4-5 level, but no focal disc oxtrusion or central canal or foraminal stenosis. Dr. Mutz also suspected some nerve sheath ectasia at L5-S1.

In an April 24, 2013 progress note, Dr. Michael T. Harris, Board-certified in physical medicine and rehabilitation, examined appellant for complaints of right groin pain in her adductor magnus. He noted that he ruled out lumbar radiculopathy as evidenced by an MRI scan.

In May 8 and 15, 2013 progress notes, Dr. Joshua G. Hackel, a Board-certified family practitioner who specializes in sports medicine, examined appellant for complaints of right hip and inner thigh pain that developed around October or November 2012. He related that the symptoms were currently mild to moderate and increased with walking, prolonged sitting, driving, hiking, and climbing stairs. Dr. Hackel reviewed appellant's history and conducted an examination. He observed pain on external rotation with flexion of the hip but no pain with resistance. Dr. Hackel reported no tenderness, swelling, or deformity. Straight leg raise and Heel tap tests were negative. Faber test was positive. Dr. Hackel stated that right hip and femur radiographs demonstrated no soft tissue abnormalities or fractures. He diagnosed right groin/adductor strain and labral tear of the hip.

In a May 28, 2013 MRI scan of the hip, Dr. Kimberly Garcia, a Board-certified diagnostic radiologist, noted appellant's complaints of right hip pain. She observed right greater than left bilateral hip joint space narrowing and marrow edema and subchondral cyst formation present anteriorly on the right. Dr. Garcia also reported abnormality and morphologic irregularity of the anterior and superior labrum of the right hip, which was consistent with labral tear and labral detachment. She also noted right greater than left gluteus minimus and medium tendinosis. Dr. Garcia opined that appellant had a technically successful hip arthrogram with

anterior-superior labral detachment, bilateral hip osteoarthritis, and right greater than left gluteus minimus and medius tendinosis. She diagnosed sprain of the hip.

In a July 1, 2013 report, Dr. Adam W. Anz, a Board-certified orthopedic surgeon, evaluated appellant for right hip and groin pain for approximately the past eight months. Appellant related that she began to notice the pain when she arose from her stool at work, specifically with hip adduction and flexion. Dr. Anz reviewed her history and conducted an examination. He observed normal anatomic alignment and no edema, effusion, obvious deformities, or discoloration of the right hip. Dr. Anz provided range of motion findings and noted sharp pain at about 90 to 100 degrees. Anterior impingement was positive and Trendelenburg's sign was also present on the right hip. Dr. Anz reported that resisted straight leg raise was painful. He noted that radiographs of the pelvis demonstrated no obvious osseous lesions or lucenices. Dr. Anz also observed normal joint space through the lateral sorcil, anterior sorcil, and in line with fovea. He reported that an MRI scan of the hip demonstrated signal change at the anterior superior labrum and questionable anterior acetabular subchondral cyst. Dr. Anz diagnosed labral tear and femoroacetabular impingement (FAI). He stated that appellant appeared to have subtle hip instability related to combined FAI and labral pathology. Dr. Anz noted that her symptoms began following an incident where she arose from her stool and explained that this type of injury was commonly seen when the hip was put into a deep, flexed position with internal, and external rotation of the hip.

By decision dated August 1, 2013, an OWCP hearing representative denied appellant's claim with modification. The hearing representative accepted that appellant's physician provided a diagnosis of right hip labrum detachment and bilateral hip osteoarthritis but denied her claim finding insufficient medical evidence to establish that her accepted condition was causally related to her employment.

In a letter dated August 29, 2013 and received by OWCP on September 11, 2013, appellant noted that she was including the results from her orthopedic physician that were not previously submitted. OWCP treated her letter as a request for reconsideration.

In an October 2, 2013 addendum to his April 24, 2013 report, Dr. Harris related appellant's complaints of right groin pain. He noted that it appeared to be her adductor magnus. Dr. Harris stated that he felt this type of injury to the groin was consistent with twisting under load bearing. He could not say whether a specific incident caused this type of injury but opined that there was some type of injury consistent with overall presentation.

In a decision dated January 9, 2014, OWCP denied modification of the August 1, 2013 denial decision.

In an appeal request form received by OWCP on May 20, 2014, appellant requested reconsideration. In an attached statement, she related that she injured the cartilage in her right hip socket with the repetitive movement of raising her office chair while swiveling back to her computer. Appellant explained that from October 2013 to February 2014 her patient load was greatly reduced due to staffing and her hip felt better during that time. When her patient load went back to normal she stated that her hip began to hurt again. Appellant reported that she was unable to get down to people's feet without creating the hip motion that Dr. Anz referred to.

By decision dated June 18, 2014, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant further merit review under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[2] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[3] In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[4]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[5] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[6]

ANALYSIS -- ISSUE 1

Appellant alleges that she sustained a right groin and inner thigh injury as a result of repetitively turning around and adjusting the height of her chair in the performance of duty as a health technician. OWCP accepted that she was diagnosed with a right hip condition and performed the duties of a health technician. It denied appellant's claim finding insufficient medical evidence to establish that her medical condition was causally related to her employment. The Board finds that she did not meet her burden of proof to establish a right hip injury as a result of factors of her employment.

Appellant submitted reports by Dr. Harris. In his April 24, 2013 note, Dr. Harris related her complaints of right groin pain in her adductor magnus and ruled out lumbar radiculopathy based on diagnostic results. In the October 2, 2013 addendum, he stated that appellant's injury

[2] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan,* 20 ECAB 55, 58 (1968).

[3] *M.M.,* Docket No. 08-1510 (issued November 25, 2010); *G.T.,* 59 ECAB 447 (2008); *Elaine Pendleton,* 40 ECAB 1143, 1145 (1989).

[4] *R.H.,* 59 ECAB 382 (2008); *Ernest St. Pierre,* 51 ECAB 623 (2000).

[5] *I.R.,* Docket No. 09-1229 (issued February 24, 2010); *D.I.,* 59 ECAB 158 (2007).

[6] *I.J.,* 59 ECAB 408 (2008); *Victor J. Woodhams,* 41 ECAB 465 (2005).

appeared to be her adductor magnus. Dr. Harris explained that this type of injury to the groin was consistent with twisting under load bearing. He could not opine on whether a specific incident caused this type of injury but reported that there was some type of injury consistent with overall presentation. The Board notes that Dr. Harris did not provide a firm medical diagnosis or explanation as to the cause of appellant's right groin pain but opined that her injury "appeared" to be her adductor magnus. Although Dr. Harris reported that this type of groin injury was consistent with twisting under load bearing he could not relate her complaints to any employment incident or her employment's duties. His reports lack probative value in that they did not provide a firm diagnosis, are vague and equivocal, and failed to explain the causal relationship between appellant's condition and any specific work-related activities.[7]

Appellant was also examined by Dr. Hackel. In progress notes dated May 8 and 15, 2013, Dr. Hackel noted complaints of right hip and thigh pain since October or November 2012 and reviewed her history. Upon examination, he observed pain on external rotation with flexion of the hip but no pain with resistance. Dr. Hackel reported no tenderness, swelling, or deformity. Straight leg raise and Heel tap tests were negative, but Faber test was positive. He diagnosed right groin/adductor strain and labral tear of the hip. Dr. Hackel did not, however, provide any opinion on the cause of appellant's right hip condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[8] Similarly, the diagnostic reports of Dr. Mutz is also insufficient to establish causal relationship. Although he noted appellant's history of right hip and leg pain and provided diagnoses based on their examination, none of the physicians provided any opinion on the cause of her diagnosed conditions. Dr. Garcia, a radiologist, interpreted the MRI scan images. She indicated that the intrapelvic evaluation showed no obvious abnormity.

Appellant also submitted a July 1, 2013 report by Dr. Anz, who examined her for right hip and groin pain that began when she arose from her stool at work. Dr. Anz reviewed her history and noted that an MRI scan of the hip demonstrated signal change at the anterior superior labrum. Upon examination of the right hip, he observed normal anatomic alignment and no edema, effusion, obvious deformities, or discoloration of the right hip. He provided range of motion findings and reported sharp pain at about 90 to 100 degrees. Anterior impingement was positive and Trendelenburg's sign was also present on the right hip. Dr. Anz diagnosed labral tear and FAI. He stated that appellant appeared to have subtle hip instability related to combined FAI and labral pathology. Dr. Anz noted that her symptoms began following an incident where she arose from her stool and explained that this type of injury was commonly seen when the hip was put into a deep, flexed position with internal, and external rotation of the hip.

The Board notes that Dr. Anz attributes appellant's right hip condition to an incident when she arose from her stool and not to the repetitive turning and raising of her chair, with her feet, as alleged by appellant. The Board has held that medical reports must be based on a complete and accurate factual and medical background. Medical opinions based on an

[7] *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); *Michael E. Smith*, 50 ECAB 313 (1999).

[8] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *.A.D.*, 58 ECAB 149 (2006).

incomplete or inaccurate history are of limited probative value.[9] Dr. Anz did not provide any explanation, as to how appellant's repetitive turning in her chair as a health technician caused or contributed to her right hip condition. A physician must relate specific employment factors identified by the claimant to the claimant's condition to establish causal relationship.[10] Because Dr. Anz fails to attribute appellant's right hip condition to her specific duties as a health technician, his opinion is also insufficient to establish her claim.

Appellant also submitted an April 4, 2013 evaluation by Ms. York, a physician's assistant. Section 8102(2) of FECA, however, provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. Because physician's assistants are not "physicians" as defined by FECA, their medical opinions regarding diagnosis and causal relationship are of no probative medical value.[11]

On appeal, appellant alleged that the medical evidence established that the type of injury she sustained was consistent with repetitive twisting and pushing as seen in sports injury. She noted that she did not play any sports and the place where she did this type of motion was in the office. As noted above, however, the medical evidence submitted was of limited probative value and was insufficient to establish that appellant's right hip condition resulted from factors of her employment. The issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.[12] Because appellant failed to provide such probative medical opinion, the Board finds that OWCP properly denied her claim.

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.[13] OWCP's regulations provide that OWCP may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his or her right through a request to the district office.[14]

[9] *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[10] *L.F.*, Docket No. 10-2287 (issued July 6, 2011); *Solomon Polen*, 51 ECAB 341 (2000).

[11] 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

[12] *W.W.*, Docket No. 09-1619 (June 2, 2010); *David Apgar*, 57 ECAB 137 (2005).

[13] 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

[14] 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.[15]

A request for reconsideration must also be submitted within one year of the date of OWCP's decision for which review is sought.[16] A timely, request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.[17] If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.[18]

ANALYSIS -- ISSUE 2

In a decision dated January 9, 2014, OWCP denied modification of the August 1, 2013 decision, which denied appellant's occupational disease claim finding that the medical evidence did not establish that her right hip condition was causally related to factors of her employment. Appellant requested reconsideration on May 20, 2014. In an attached statement, she related that she injured the cartilage in her right hip socket with the repetitive movement of raising her office chair while swiveling back to her computer. Appellant explained that from October 2013 to February 2014 her patient load was greatly reduced due to staffing and her hip felt better during that time. When her patient load went back to normal she stated that her hip began to hurt again. Appellant reported that she was unable to get down to people's feet without creating the same hip pain.

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review as the submission of this statement did not require reopening her case for merit review. OWCP denied her claim finding that the medical evidence failed to establish a right hip and groin injury as a result of her employment. As the underlying issue in this case was a medical issue, it must be addressed by relevant new medical evidence.[19] Appellant's statement and further explanation of her employment duties and injury is not relevant and pertinent to the underlying causal relationship in this case. Therefore, it is not sufficient to require OWCP to reopen her claim for consideration of the merits.

[15] *Id.* at § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

[16] *Id.* at § 10.607(a).

[17] *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

[18] *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

[19] *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her right hip condition was causally related to factors of her employment. The Board also finds that OWCP properly denied her request for reconsideration pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the June 18, and January 9, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 16, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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