United States Department of Labor
Employees' Compensation Appeals Board

J.P., Appellant	)	
and	)	**Docket No. 14-1328**
	)	**Issued: November 19, 2014**
DEPARTMENT OF VETERANS AFFAIRS, HARBOR HEALTHCARE SYSTEM, Brooklyn, NY, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 19, 2014 appellant, through her attorney, filed a timely appeal from the February 6, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her recurrence claim. 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.

ISSUE

The issue is whether appellant has established a recurrence of disability from February 23 to November 23, 2011 causally related to her January 24, 2006 employment injury.

On appeal, counsel contends that the medical evidence of record establishes that appellant's worsening condition and disability for work are causally related to her accepted work injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on January 24, 2006 appellant, then a 64-year-old psychologist, sustained a closed right hip fracture as a result of falling on black ice while in the performance of duty. She underwent an intramedullary nailing of a right intertrochanteric hip fracture on January 25, 2006.[2]

On June 15, 2006 appellant returned to a limited-duty psychologist position, six hours a day and later increased to seven hours effective July 11, 2006. Her place of assignment was home. The duties of the position included oversight of the psychology section at the Brooklyn campus which involved managing all relevant correspondences; and preparation and review of written materials pertaining to program function, staff issues, resource needs, agenda for administrative meetings; oversight of the domiciliary residential program section which involved reviewing written materials pertaining to program function, staff issues, resource needs, weekly and *ad hoc* debriefings with the chief; and participation *via* telephone in weekly administrative meetings. The duties were to be performed in a home setting. The physical requirements involved limited sitting and walking one to four hours, standing as fatigue and pain permitted, simple grasping with no restriction and work above the shoulder.

On April 22, 2011 appellant filed a claim (Form CA-7) for compensation from February 23 to April 22, 2011 as she was in a leave without pay (LWOP) status. On June 4, 2011 she filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability on February 23, 2011 as she continued to experience increased pain that rendered her unable to work. Appellant stopped work on February 23, 2011.

In a decision dated September 7, 2011, OWCP accepted that appellant sustained a recurrence of disability on September 23, 2011 causally related to her accepted January 24, 2006 employment injury.

On October 17, 2011 appellant filed a Form CA-7 for compensation from April 25 to November 24, 2011 as she was again in an LWOP status.

In a June 24, 2011 right hip x-ray report, Dr. Christopher W. Olcott, an attending Board-certified orthopedic surgeon, found a sequela of proximal right femoral fracture without residual hardware and metallic fragments. He stated that the study was negative for appreciable right hip osteoarthrosis, new fracture or dislocation. In a September 26, 2011 work capacity evaluation (Form OWCP-5c), Dr. Olcott listed appellant's physical restrictions and advised that she was unable to work eight hours a day.

By letter dated December 6, 2011, OWCP asked appellant to submit rationalized medical evidence in support of her disability claims.

In a June 15, 2011 letter, Dr. Carlos A. Sagebien, an attending Board-certified orthopedic surgeon, noted that appellant had been his patient since January 24, 2006. He provided a history of the accepted employment injury and her medical treatment. Dr. Sagebien stated that, although

[2] On March 2, 2007 appellant underwent surgery to remove hardware from her right hip.

appellant initially did well with surgical intervention, her rehabilitation had been limited by chronic pain in her right hip area. Appellant had chronic tendinitis of her gluteus maximus tendon, chronic trochanteric bursitis and chronic iliotibial band syndrome over her proximal trochanter. She had undergone multiple courses of failed treatment with physical therapy and also had multiple injections over her right hip joint and gluteus maximus tendon with intermittent relief of pain. Although the injections helped to alleviate her pain, appellant had never been completely pain-free since the time of her initial fracture. Dr. Sagebien also noted that she was treated by Dr. Elton Strauss, a Board-certified orthopedic surgeon, in January 2008 and that Dr. Strauss agreed that she had significant trochanteric bursitis and spurring of the trochanter and that she would benefit from a surgical procedure to decompress her iliotibial band and debride her bursa and greater trochanter. Dr. Sagebien noted, on appellant's last visit on March 23, 2011, she continued to show objective and clinical findings of pathology in her right hip joint including a Trendelenburg gait, continued weakness in the right hip abductor muscles, tenderness over the right greater trochanter, and posterior hip joint where the gluteus maximus tendon inserted. Appellant also had continued significant pain in her right hip area that precluded her from sitting in a car for long periods of time. Therefore, Dr. Sagebien hesitated to clear her to drive long periods of time as this would not present safe driving conditions. He also questioned appellant's ability to safely manipulate the gas and brake pedals. Because of the chronicity of her pathology in her right hip joint, Dr. Sagebien did not believe that she would be able to drive herself to and from work. He thought that it would be difficult for appellant to carry out her job as she had significant pain with ambulation and sitting or standing long periods of time. Dr. Sagebien concluded with his opinion that she may still be a candidate for further surgical decompression of her right hip joint.

In a January 20, 2012 decision, OWCP denied appellant's claim for compensation from February 23 to November 23, 2011, finding that the medical evidence did not establish that she was totally disabled during the claimed period resulting from her accepted January 24, 2006 employment injury.

On December 13, 2012 appellant requested reconsideration.

In clinic notes dated July 20, 2012, Dr. Olcott provided a history of the January 24, 2006 employment injury and appellant's medical treatment. He noted her persistent lateral and posterolateral hip pain that was aggravated by prolonged sitting, standing or walking. Dr. Olcott further noted that appellant had no recent trauma or medical issues. He reported essentially normal findings on physical and x-ray examination. Dr. Olcott assessed appellant as being over six years status post displaced right intertrochanteric hip fracture treated with a cephalomedullary nail with subsequent removal. He stated that she had persistent lateral and posterolateral hip pain and noted that she had been out of work since February 23, 2011. Appellant also had pain with periods of sitting, standing and walking. She was limited in her activities of daily living. Dr. Olcott stated that x-rays showed well-preserved joint space, but found that his examination was consistent with trochanteric bursitis and tendinitis with decreased hip flexion and abductor strength. He advised that appellant was disabled from her previous level of function at work.

In a September 20, 2012 letter, Dr. Olcott noted that he reviewed her job duties and responsibilities during her last evaluation. He advised that, since appellant's job required intense face-to-face sustained contact with personnel and patients and a prolonged commute, she was

unable to return to her current job description. Appellant's pain limited her from sitting long periods of time, *i.e.*, greater than one hour, which would affect her ability to work on a computer and have sustained contact and evaluation of patients and personnel. Dr. Olcott concluded that she was disabled from her current job.

In a March 20, 2013 decision, OWCP denied modification of the January 20, 2012 decision. It treated appellant's claims for compensation as a claim for a recurrence of disability. OWCP found that she failed to submit rationalized medical evidence to establish that her accepted conditions had worsened and resulted in her disability.

By letter dated November 12, 2013, appellant, through her attorney, requested reconsideration and submitted evidence. In an October 25, 2013 report, Dr. Sagebien again provided a history of the January 24, 2006 employment injury and her medical treatment. He also provided his findings on examination of her right hip from June 6, 2006 to March 23, 2011. Dr. Sagebien stated that during the course of appellant's multiple office visits to his practice she had a continuing pattern of significant tenderness of her trochanter, weakness around her right hip and reports of chronic pain in her right hip joint. He advised that she was unable to continue working at the employing establishment and subsequently unable to perform her duties from home secondary to her continued objective tenderness, pain and snapping of her right hip. Dr. Sagebien advised that these findings were radiographically consistent with appellant's symptoms. He diagnosed right hip fracture and chronic pain and weakness of the right hip. Dr. Sagebien concluded with his opinion that it was with a reasonable degree of medical probability that appellant's right intertrochanteric hip fracture and subsequent chronic pain, tenderness, snapping and weakness of her right hip joint were secondary to the fall she sustained at the time of her original injury. He further opined that it was with a reasonable degree of medical probability that her injury was permanent in nature and would not improve with further nonoperative or operative treatment.

In a February 6, 2014 decision, OWCP denied modification of the March 20, 2013 decision. It found that Dr. Sagebien did not provide any findings or rationale to support a material change or worsening of appellant's accepted employment injury.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[3] This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[4]

[3] 20 C.F.R. § 10.5(x).

[4] *Id.*

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.[5]

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.[6]

ANALYSIS

OWCP accepted appellant's claim for a closed right hip fracture. On June 15, 2006 appellant returned to modified-duty work from home for the employing establishment. She claimed a recurrence of disability from February 23 to November 23, 2011 due to her accepted injury. Appellant does not allege that this disability was a result of a change in the nature and extent of her limited-duty job requirements. Her burden therefore is to show a change in the nature and extent of her injury-related condition.

The Board finds that appellant has not submitted sufficient medical opinion evidence to support the claimed period of disability. Dr. Olcott's reports and letter do not contain a rationalized opinion explaining how she was disabled due to a worsening of her accepted work-related condition from February 23 to November 23, 2011. His June 24, 2011 right hip x-ray report did not contain objective evidence of disability. Dr. Olcott reported a sequela of proximal right femoral fracture without residual hardware and metallic fragments and found no appreciable osteoarthrosis, new fracture or dislocation. While he opined in his September 26, 2011 OWCP-5c form and July 20, 2012 clinic notes that appellant's trochanteric bursitis and tendinitis with decreased hip flexion and abductor strength, chronic pain, tenderness and weakness, right hip fracture, physical restrictions and permanent total disability for her limited-duty position were caused by the January 24, 2006 employment injury, he did not explain how her conditions, restrictions and disability were caused by the accepted employment injury.[7] In his September 20, 2012 letter, Dr. Olcott opined that appellant was unable to return to her current job because her job duties and responsibilities required intense face-to-face sustained contact with personnel and patients and a prolonged commute. However, the Board notes that the duties of her limited-duty position were performed at home. Appellant was not required to drive to an office or have face-to-face contact with personnel and patients. It is well established that medical reports must be based on a complete and accurate factual and medical background and

[5] *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Barry C. Peterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[6] *James H. Botts*, 50 ECAB 265 (1999).

[7] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

medical opinions based on an incomplete or inaccurate history are of little probative value.[8] Further, while Dr. Olcott found that appellant could not sit longer than one hour, he did not explain how this restriction was caused by the January 24, 2006 employment injury. The Board has found 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.[9] The Board finds that Dr. Olcott's submissions are insufficient to establish appellant's claim.

In an October 25, 2013 report, Dr. Sagebien opined that appellant had a right intertrochanteric hip fracture and subsequent chronic pain, tenderness, snapping and weakness of her right hip joint and that she was disabled for work secondary to the January 24, 2006 employment. He provided findings on examination and advised that she had a continuing pattern of significant tenderness of her trochanter, weakness around her right hip and reports of chronic pain in her right hip joint. Dr. Sagebien stated that appellant was unable to continue working at the employing establishment and later she was unable to perform her duties from home due to her conditions. He further stated that her injury was permanent in nature and would not improve with further nonoperative or operative treatment. In a June 15, 2011 letter, Dr. Sagebien reported that appellant's chronic right hip weakness, tenderness and pain prevented her from driving to and from work. He concluded that she may require further right hip surgery. Dr. Sagebien did not provide a firm medical diagnosis of any condition resulting from the accepted right hip fracture. His finding of chronic pain, tenderness, snapping and weakness of the right hip is a description of a symptom rather than a clear diagnosis of a medical condition.[10] Further, Dr. Sagebien either did not provide adequate medical rationale to support his opinion on causal relationship[11] or did not address causal relationship.[12] Lastly, his finding that appellant's condition prevented her from driving to and from work is of little probative value as it is based on an inaccurate factual background.[13] As stated above, appellant's limited-duty position required her to work at home. The Board finds that Dr. Sagebien's submissions are insufficient to establish a worsening of her employment-related condition.

Appellant failed to submit sufficiently rationalized medical evidence establishing that her right hip condition and resultant disability from February 23 to November 23, 2011 resulted from the residuals of her accepted injury.[14] She has not met her burden of proof.[15]

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[8] *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[9] *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Willie M. Miller*, 53 ECAB 697 (2002); *Michael E. Smith*, 50 ECAB 313 (1999).

[10] *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[11] *Franklin D. Haislah*, *supra* note 7.

[12] *See* cases cited, *supra* note 9.

[13] *Douglas M. McQuaid*, *supra* note 8.

[14] *Cecelia M. Corley*, 56 ECAB 662 (2005).

[15] *Tammy L. Medley*, 55 ECAB 182 (2003).

On appeal, appellant's attorney contended that the medical evidence of record establishes that appellant's worsening condition and disability for work are causally related to her accepted work injury. For reasons stated above, the Board finds that she did not submit sufficient rationalized medical evidence establishing that she sustained a recurrence of disability during the claimed period due to her accepted January 24, 2006 employment injury.

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 has failed to establish that she sustained a recurrence of disability from February 23 to November 23, 2011 causally related to her January 24, 2006 employment injury.

ORDER

IT IS HEREBY ORDERED THAT February 6, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 2014
Washington, DC

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

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

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