United States Department of Labor
Employees' Compensation Appeals Board

R.S., Appellant	)	
	)	**Docket No. 15-1686**
and	)	**Issued: November 25, 2015**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Lansdowne, PA, Employer	)	

Appearances:
Thomas K. Ellixson, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 4, 2015 appellant, through counsel, filed a timely appeal from a June 18, 2015 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.

ISSUE

The issue is whether appellant met his burden of proof to establish total disability after January 25, 2013 due to his accepted May 25, 2012 employment injuries.

On appeal, counsel contends that appellant continues to suffer from his May 25, 2012 employment injuries.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 2, 2012 OWCP accepted that appellant sustained postconcussion syndrome as a result of a motor vehicle accident in the performance of duty as a letter carrier on May 25, 2012. Appellant stopped work on May 28, 2012 and returned to full-duty work on July 30, 2012.

By letters dated September 12 and October 3, 2012, OWCP expanded the acceptance of appellant's claim to include contusion and strain of the back and contusion and strain of the left hip. On October 30, 2012 appellant stopped work.

In a November 1, 2012 medical report, Dr. Charles F. Denny, an attending Board-certified orthopedic surgeon, noted May 25, 2012 as the date of injury. In the report and a prescription and a progress note dated November 1, 2012, he diagnosed sciatica and pain in the left leg. Dr. Denny advised that appellant was totally disabled from employment activities. He ordered a magnetic resonance imaging (MRI) scan of the lumbosacral spine.

By letter dated December 10, 2012, OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Robert A. Smith, a Board-certified orthopedic surgeon, for a second opinion. In a January 3, 2013 report, Dr. Smith reviewed a history of the May 25, 2012 employment injuries and the medical record, and provided essentially normal examination findings with the exception of a lumbar MRI scan which showed a minor disc bulge at L4-5 that caused some moderate stenosis centrally and in the foramen on the right side which did not account for appellant's left-sided symptoms. He opined that there were no objective findings to indicate any residuals of appellant's accepted employment-related back and left hip conditions. Dr. Smith further opined that appellant could return to regular duty without restriction. He noted that he had no comment on appellant's accepted postconcussion syndrome as this head injury was outside the arena of orthopedics.

By letter dated January 17, 2013, OWCP requested that Dr. Denny review and comment on Dr. Smith's January 3, 2013 report. Dr. Denny was afforded 15 days to respond. He did not respond.

On January 25, 2013 appellant filed a claim (Form CA-7) for compensation from January 12 to 25, 2013. OWCP paid him total disability compensation for the claimed period. Thereafter, appellant filed multiple Form CA-7 claims for compensation for periods of total disability after January 25, 2013.

In a February 13, 2013 decision, OWCP denied appellant's claim for compensation commencing January 25, 2013. It found that the weight of the medical opinion evidence rested with Dr. Smith's opinion that appellant was not totally disabled for work due to the accepted May 25, 2012 employment injuries and that he could perform his regular work duties.

On February 18, 2013 appellant requested an oral hearing before an OWCP hearing representative. At the July 17, 2013 hearing, he contended that he suffered from sciatica and that his condition was caused by the accepted work injuries.

Following the hearing, appellant submitted activity records and treatment notes dated October 8 to December 17, 2012 from his physical therapists which addressed the treatment of his hip and back conditions.

In a January 11, 2013 report, Dr. Ari C. Greis, a Board-certified physiatrist, noted a history of the May 25, 2012 employment injuries and provided examination findings. He provided an impression of persistent low back pain with left lower extremity radicular symptoms more in the lateral thigh and calf, lumbar spondylosis with moderate foraminal narrowing on the left at L4-5, and a May 25, 2012 work-related motor vehicle accident. Dr. Greis recommended a left L4 transforaminal epidural steroid injection under fluoroscopy guidance. In a July 9, 2013 report, he noted a history of the May 25, 2012 employment injuries and his own treatment of appellant. Dr. Greis noted that appellant presented a diagnostic dilemma as it was not entirely clear what generated his pain. He opined that appellant's residual left-sided low back, buttock, and hip pain with intermittent radiation down to the left lower extremity were causally related to his May 25, 2012 motor vehicle accident. Dr. Greis suspected that appellant had some component of sacroiliac joint mediated pain. However, appellant did not get much relief with an intra-articular steroid injection done under fluoroscopic guidance. Dr. Greis noted that appellant did not have any significant spinal stenosis or focal disc herniation and stated that fortunately his electromyogram was negative for any nerve damage. He reviewed Dr. Smith's January 3, 2013 report and agreed with his finding that appellant had reached maximal medical improvement regarding his left back, hip, and leg symptoms. However, appellant was clearly still symptomatic as a result of his injuries. He had concomitant functional limitations as a result of ongoing pain.

In a May 20, 2013 report, Dr. John J. Kraus, a Board-certified physiatrist, noted a history of the May 25, 2012 employment injuries, appellant's complaints, and examination findings. He noted that appellant had a one-year history of pain in the sacral and iliac areas on the left side with radiation into the left lower extremity. Appellant's examination was fairly unremarkable except for a slight shortening of the left lower extremity compared to the right which could have been a function of muscle spasm pulling up the limb. Dr. Kraus addressed appellant's treatment plan.

In an October 21, 2013 decision, an OWCP hearing representative affirmed the February 13, 2013 decision, finding that the medical evidence submitted was insufficient to outweigh the weight accorded to Dr. Smith's opinion that appellant was not totally disabled due to his May 25, 2012 employment injuries.

By letter dated October 17, 2014, appellant, through counsel, requested reconsideration.

In an October 10, 2014 report, Dr. Kraus reviewed Dr. Smith's January 3, 2013 report and disagreed with his finding that appellant no longer had any residuals of his accepted employment injuries. He noted that Dr. Smith's finding that a lumbar MRI scan showed a bulging disc at L4-5 that caused moderate stenosis centrally and in the right foremen was contrary to the finding reported by the radiologist who performed the test that the bulging was asymmetric to the left and there was a moderate left foraminal narrowing which was consistent with appellant's left-sided symptoms. Dr. Kraus also disagreed with his finding that appellant had reached maximal medical improvement as of January 3, 2013 because he had not

participated in a chronic pain treatment program, which subsequently resulted in him returning to work on a part-time basis and a reduction of his symptoms. He noted that, based on his review of the records and history obtained from appellant, he had no information that appellant had a preexisting back pain condition. Dr. Kraus opined that his symptoms were a result of the injuries he sustained during the May 25, 2012 accident.

On February 13, 2015 OWCP found a conflict in medical opinion between Dr. Smith and Dr. Kraus as to whether appellant continued to suffer from residuals of his accepted May 25, 2012 employment injuries. By letter dated February 17, 2015, it referred appellant, together with a statement of accepted facts (SOAF) and the medical record, to Dr. Scott E. Sexton, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a March 16, 2015 report, Dr. Sexton reviewed the SOAF and appellant's medical record, noted his complaints, and presented findings on examination. Appellant was reported not to appear to be in any obvious distress. He did not utilize any braces or ambulatory aids. Appellant was able to walk from the front of the office to the back. He did demonstrate somewhat of a modified gait pattern. In the standing position, appellant demonstrated full range of motion of the cervical spine and bilateral upper extremities with no pathology noted. There appeared to be no bruising, spasm, swelling, or edema in the lumbar region. Range of motion of the lumbar spine demonstrated approximately 50 degrees of forward flexion at which point appellant started to bend his knees and complained of discomfort in the low back. It was hard for him to get back up from this position. Appellant reported that his left leg sometimes got stuck and he had to shake it out. Upon standing back up, extension of the lumbar spine was noted to be limited to approximately 15 degrees with mild discomfort. Side bending was approximately 30 degrees in each direction with mild discomfort. Truncal rotation was 30 degrees with mild discomfort. During the course of the examination, appellant demonstrated episodes of shaking his left leg out and complained that it would lock and jerk. On palpatory examination of the lumbar spine, there was mild tenderness to the left lumbar paraspinal musculature and left buttock. It was negative on the right. No spasm was appreciable by visual or palpatory examination. AP and lateral compression of the pelvis did not demonstrate any instability. Lateral pressure over the left hip caused mild subjective complaints of discomfort. Appellant was able to reach for objects overhead with mild complaints of low back discomfort. He had difficulty bending and picking up objects off the floor. In a seated position, appellant demonstrated 5/5 strength to bilateral hip flexors, knee flexors and extensors, and ankle plantar flexors and dorsiflexors. Sensation appeared to be grossly intact in all nerve distributions and dermatomes to bilateral lower extremities. A seated straight leg raise was negative for reproduction of radiculopathy. In the supine position, appellant was able to pull his knee into his abdomen bilaterally. Faber maneuver was negative for reproduction of sacroiliac complaints. Supine straight leg raise caused mild low back pain bilaterally, but was negative for radiculopathy.

Dr. Sexton noted the accepted conditions of back and left hip contusions and back and left hip sprains. He explained that a contusion injury typically resulted from a direct blow to an isolated part of the body which caused pain, bruising, and swelling. This resulted in damage to the underlying soft tissues of that region. Typical recovery was from three to six months with appropriate activity modification and conservative care. Dr. Sexton noted that currently, there was no ongoing objective evidence of a contusion injury. There was no bruising, spasm,

swelling, or edema around the left hip or low back. Based on the lack of objective findings and the time course of injury, Dr. Sexton concluded that appellant had fully recovered from his May 25, 2012 employment-related back and left hip contusion. He noted that a sprain/strain injury was due to a stretch of the muscular and ligamentous soft tissues that supported the joints of the body. This was typically a self-limited condition which resolved within four to six months with appropriate activity modification and conservative care. There certainly were outliers, particularly in patients such as, appellant, with preexisting degenerative disease affecting the adjacent joints. Dr. Sexton related that he clearly demonstrated significant degenerative disease of the left hip and lumbar spine, as noted objectively on diagnostic studies, including the lumbar MRI scan and plain x-rays. Recovery for these individuals may be more protracted and take up to one year. Dr. Sexton noted that there was no evidence of bruising, spasm, swelling, or edema of the back. Range of motion appeared functional. Appellant demonstrated a normal neurologic examination including motor, reflex, and sensory testing. Dr. Sexton noted that he had received diagnostic injections to the lumbar spine and sacroiliac joints which ruled these areas out as an ongoing source of pain. Appellant demonstrated unusual clinical findings such as, voluntary left leg movements and jerking.

Based on the multiple factors noted, lack of objective findings, and time course of injury, Dr. Sexton concluded that he had fully recovered from his lumbar/low back sprain. He noted appellant's left hip sprain and noted that on examination, appellant demonstrated full range of motion with a negative provocative sign. Again, the clinical examination showed unusual behaviors at the left hip and lower extremity. Objective testing, including the lumbar MRI scan did show a preexisting arthritic condition, which likely led to appellant's more protracted recovery from his left hip sprain. However, Dr. Sexton concluded that, due to a lack of objective findings and the time course of injury, he had recovered from his left hip sprain. He opined that appellant did not suffer with residuals from his May 25, 2012 employment-related back and left hip contusion and back and left hip sprain. Appellant did suffer from significant arthritis of the lumbar spine and moderate arthritis of the left hip. Dr. Sexton concluded that his subjective complaints were likely based on these issues.

In a June 18, 2015 decision, OWCP denied modification of the October 21, 2013 decision. It found that the special weight of the medical evidence, as represented by Dr. Sexton's impartial medical opinion, established that appellant's accepted employment-related conditions had ceased and that he had no work-related residuals stemming from the conditions.

LEGAL PRECEDENT

With respect to a claimed period of disability, an employee has the burden of establishing that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[2] The term disability is defined as the incapacity because of an

[2] *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.[3]

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.[4] The medical evidence required to establish a period of employment-related disability is rationalized medical evidence.[5] Rationalized medical evidence is medical evidence based on a complete factual and medical background of the claimant, of reasonable medical certainty, with an opinion supported by medical rationale.[6] The Board, however, will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.[7] To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.[8]

Section 8123(a) provides that, if there is a 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.[9] It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[10]

ANALYSIS

OWCP accepted that appellant sustained postconcussion syndrome, contusion and strain of the back, and contusion and strain of the left hip while in the performance of duty on May 25, 2012. Appellant claimed compensation for disability for the period January 26 to February 8, 2013. As such, appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between his claimed disability for that period and the accepted conditions.[11] The Board finds that appellant did not submit

[3] 20 C.F.R. § 10.5(f); *see e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

[4] *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

[5] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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

[7] *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[8] *See William A. Archer*, 55 ECAB 674 (2004); *see also supra* note 4.

[9] *Regina T. Pellecchia*, 53 ECAB 155 (2001).

[10] *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

[11] *See Amelia S. Jefferson*, 57 ECAB 183 (2005).

sufficient medical evidence to establish employment-related disability for the period claimed due to his accepted injuries.[12]

OWCP referred appellant to Dr. Sexton to resolve the conflict in medical opinion between Dr. Smith, an OWCP referral physician, who found that appellant had no residuals of his accepted May 25, 2012 employment injuries and he was capable of working full duty with no restrictions, and Dr. Kraus, appellant's attending physician, who opined that he continued to suffer residuals from his accepted employment injuries. The Board finds that OWCP properly referred appellant to Dr. Sexton to resolve the conflict in the medical opinion evidence, pursuant to 5 U.S.C. § 8123(a).

The Board further finds that Dr. Sexton's opinion represents the special weight of the medical evidence on whether appellant continued to suffer residuals from the May 25, 2012 employment injuries after January 25, 2013. Dr. Sexton was provided a complete factual and medical background with a SOAF and medical records. In a March 16, 2015 report, he provided a history and detailed results on examination. Dr. Sexton opined that appellant had fully recovered from the May 25, 2012 employment-related injuries and he had no residuals. He provided rationale for his opinion by explaining that appellant's subjective complaints were unsupported by objective findings. Dr. Sexton noted that the typical recovery from a contusion was three to six months. He further noted that a sprain/strain injury typically resolved within four to six months. Dr. Sexton attributed appellant's current significant arthritis of the lumbar spine and moderate arthritis of the left hip to his preexisting arthritis which was demonstrated by MRI scan findings. As his report is detailed, well rationalized and based on a proper factual background, Dr. Sexton's opinion is entitled to the special weight accorded an impartial medical examiner.[13]

On appeal, counsel contends that appellant continues to suffer from his May 25, 2012 employment injuries. As found herein, Dr. Sexton's opinion is entitled to the special weight accorded an impartial medical examiner and establishes that appellant has no continuing residuals or disability due to his accepted May 25, 2012 work injuries.

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 meet his burden of proof to establish total disability after January 25, 2013 due to his accepted May 25, 2012 employment injuries.

[12] *Alfredo Rodriguez*, 47 ECAB 437 (1996).

[13] *Supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the June 18, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 25, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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