United States Department of Labor
Employees' Compensation Appeals Board

P.D., Appellant	)	
and	)	**Docket No. 15-0593**
	)	**Issued: October 1, 2015**
DEPARTMENT OF VETERANS AFFAIRS, ST. CLOUD VETERANS ADMINISTRATION MEDICAL CENTER, St. Cloud, MN, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 23, 2015 appellant filed a timely appeal from a September 17, 2014 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 has met her burden of proof to establish that her sacroiliac joint strain and sacroiliac joint dysfunction are causally related either to her January 11 or August 14, 2008 employment injuries.

On appeal, appellant contends that she never had an S1 joint injury prior to her employment injury, that her treating physician opined that her S1 joint injury was the direct result of the employment injuries, that she still suffers from low back pain, and that OWCP never properly followed up with the initial second opinion physician.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 16, 2008 appellant, then a 39-year-old medical clerk, filed a traumatic injury claim, Form CA-1, alleging that on January 11, 2008 she slipped on a top step with her right foot, tried to correct with her left foot, skied down two steps, went airborne, and landed on her right side and then her left side. She listed the nature of her injury as "fall on stairs causing pain on entire right side." OWCP assigned File No. xxxxxx818 and on April 7, 2008 accepted appellant's claim for right buttocks contusion, right rib contusion, and thoracic facet strain.

Appellant suffered a second traumatic injury on August 14, 2008 when she was ascending stairs in the performance of duty and fell forward when she caught her foot on a step. OWCP assigned File No. xxxxxx376 and accepted this claim for a back contusion.[2]

In a June 9, 2009 report, Dr. Thomas J. Balfanz, a Board-certified physiatrist, diagnosed S1 inflammation, nonspecific thoracic pain, and deconditioning syndrome. In a September 17, 2009 follow-up report, Dr. Balfanz noted that appellant had a flare up that seemed to affect her right S1. He referred her to the Center for Pain Management for a right S1 joint injection. In an October 22, 2009 report, Dr. Balfanz noted that the injection did not help and that appellant's S1 joint pain was becoming gradually worse over time. He listed his final diagnoses as S1 inflammation, nonspecific thoracic pain, and deconditioning syndrome.

In a June 30, 2009 report, Dr. James Parmele, a physician Board-certified in anesthesiology and pain medicine, listed his impressions as low back pain, bilateral buttock pain, and S1 joint dysfunction.

On August 27, 2009 OWCP referred appellant to Dr. Randall J. Norgard, a Board-certified orthopedic surgeon, for a second opinion. In a September 21, 2009 medical report, Dr. Norgard opined that appellant sustained a thoracic sprain/strain superimposed upon a preexisting multilevel thoracic degenerative disc disease and degenerative joint disease as a result of her January 11, 2008 work injury. He further opined that the thoracic sprain/strain resolved by May 1, 2008, that the January 11, 2008 thoracic injury was a temporary aggravation of her preexisting thoracic condition, and that appellant does not have residual problems as a result of her January 11, 2008 work injury. Dr. Norgard opined that appellant was not a candidate for further medical care and had no restrictions as a result of the employment injury. He further noted that appellant sustained lumbar sprain-strain imposed upon her preexisting multilevel lumbar degenerative disc disease and degenerative joint disease as well as a sacroiliac joint injury as a result of her August 14, 2008 injury. Dr. Norgard opined that appellant continued to have pain and discomfort in the right sacroiliac joint related to the August 14, 2008 injury and had restrictions.

In a November 19, 2009 report, Dr. John G. Stark, a Board-certified orthopedic surgeon, assessed appellant with severe right hemipelvic pain since her work-related fall. He noted that she fell on a slippery step in January 2008. In a December 7, 2009 report, Dr. Stark assessed appellant with right S1 pain, severe and limiting. He noted that appellant indicated that she would like to proceed with a right S1 arthrodesis.

[2] OWCP combined File Nos. xxxxxx818 and xxxxxx376, with the former serving as the master file.

On December 15, 2009 OWCP referred appellant to Dr. Stephen E. Barron, a Board-certified orthopedic surgeon, to resolve the conflict with regard to continuing work-related disability and the ability to return to work without restrictions. In a February 8, 2010 report, Dr. Barron opined that appellant sustained a thoracic sprain as a result of the January 11, 2008 employment injury, and a lumbar sprain on August 14, 2008. He opined that appellant does not continue to suffer residuals from the accepted work injuries. Dr. Barron noted no objective findings on examination, and no evidence of sacroilitis or abnormalities of the sacrum. He concluded that based on the medical records, the claim should not be extended to include the sacroiliac joints, and that in his opinion, appellant never sustained a sacroiliac joint injury, that there was no indication that she injured her right sacroiliac joint, and no indication for surgery. Dr. Barron noted that continued treatment was not advised and that appellant was able to work full time without any limitations or restrictions.

In a February 9, 2010 report, Dr. Stark assessed appellant with severe functional restriction, right S1 pain, and mechanical back pain, untreated with workers' compensation controversy. In a March 30, 2010 report, he noted that appellant met all the diagnostic criteria for a sacroiliac fusion. In an April 8, 2010 report, Dr. Stark opined that Dr. Barron's opinion was poorly supported and that appellant was tentatively scheduled for surgery. On April 26, 2010 he performed a right sacroiliac arthrodesis on appellant. In a May 11, 2010 report, Dr. Stark indicated that appellant has had 100 percent resolution of leg pain with 80 percent resolution of back pain. He noted an excellent early result following a S1 fusion.

On June 17, 2010 OWCP issued a notice of proposed termination of all compensation benefits as the report of Dr. Barron demonstrated no employment-related residuals or disability causally related to the accepted employment injuries.

On August 4, 2011 OWCP terminated appellant's medical benefits and wage-loss compensation as appellant no longer had any residuals due to her accepted work-related injuries. Appellant requested an oral hearing before an OWCP hearing representative on August 29, 2011, which was held by telephone on December 15, 2011.

In a February 29, 2012 decision, the hearing representative affirmed the termination of compensation benefits.[3] However, he determined that further development of the medical evidence was necessary. The hearing representative noted that Dr. Norgard's opinion was not rationalized, so OWCP could not accept an injury-related sacroiliac problem based on his report. However, because OWCP undertook further development of the medical evidence, he determined that further development was necessary and a new second opinion must be obtained with regard to the nature and extent of appellant's sacroiliac condition, including whether it existed, whether it was causally related to either or both employment injuries, and whether it resulted in the need for surgery on April 26, 2010.

On March 15, 2012 OWCP referred appellant to Dr. Ronald M. Lampert, a Board-certified orthopedic surgeon, for a second opinion. On March 27, 2012 Dr. Lampert diagnosed

[3] The Board notes that as the February 29, 2012 OWCP hearing representative's termination decision was issued more than 180 days prior to the filing of the appeal, the Board has no jurisdiction to review it. *See* 20 C.F.R. § 501.3(e).

appellant with postoperative fusion, right S1 joint. He opined that there was no evidence that she sustained a sacroiliac joint injury as a result of any of her employment-related injuries listed in the statement of accepted acts. Dr. Lampert also noted that there was no causal relationship between the sacroiliac joint fusion of April 26, 2010 and either of appellant's injuries that occurred at work. He noted that no problem had been diagnosed with the sacroiliac joint until July 2009, which was 18 months after the injuries. Dr. Lampert further opined that the fusion was not a useful procedure.

On June 22, 2012 OWCP denied appellant's claim for additional conditions of sacroiliac joint dysfunction, sacroiliac joint strain, and accompanying sacroiliac fusion.

On July 17, 2012 appellant requested review of the written record by an OWCP hearing representative. In a July 12, 2012 memorandum, appellant argued that the second opinion did not represent the weight of the evidence as Dr. Lampert only saw appellant for 20 minutes, whereas her treating physician, Dr. Basil LeBlanc, a Board-certified family practitioner, gave her care for two and one-half years.

In a July 12, 2012 report, Dr. LeBlanc noted that he first saw appellant on January 11, 2008. He noted that at first he was unable to evaluate her because of her pain level. Dr. LeBlanc noted that appellant made slow progress but persisted with right buttocks pain, secondary to the contusion and sacroiliac dysfunction. He noted that appellant reinjured her back with a stumble in August 2008 leading to additional evaluation and diagnosis. Dr. LeBlanc noted that appellant ultimately had S1 joint surgery on April 26, 2010, and following that, her buttocks pain resolved. He opined that appellant's injury, complaints, physical findings, and treatment are all consistent with a sacroiliac injury sustained with the original injury January 11, 2008.

In an October 15, 2012 decision, an OWCP hearing representative vacated the June 22, 2012 decision and returned the case for further development. He indicated, that Dr. Lampert should be provided an opportunity to submit a supplemental report, that appellant must give more details about her injuries and preexisting back conditions, that the statement of accepted facts should be revised, and that appellant should submit actual magnetic resonance imaging (MRI) scans and computerized tomography (CT) films.

Subsequent to this decision, appellant submitted a September 26, 2012 statement further detailing her injuries. OWCP requested further films from appellant's diagnostic studies and issued a new statement of accepted facts on January 31, 2013.

On May 1, 2013 OWCP asked for a supplemental report from Dr. Lampert. In a May 21, 2013 report, Dr. Lampert noted that opinions could not be given at the present time, as the MRI scan and CT of the sacroiliac joints are not accessible at this time. He again diagnosed appellant with postoperative right sacroiliac joint fusion.

On August 5, 2014 OWCP referred appellant to Dr. Jeffrey Levine, a Board-certified orthopedic surgeon, for an impartial medical examination. In an August 27, 2014 report, Dr. Levine opined that there was no causal relationship between appellant's pathology with respect to the right sacroiliac joint and injuries incurred during the two accidents at work as there

existed no radiographic evidence of a sacroiliac joint injury, the diagnostic testing performed was not pathognomonic of a sacroiliac joint injury, the mechanism of the injury was not such that a sacroiliac joint injury could occur, and appellant's clinical resolution of symptoms was not consistent with improvement expected after an isolated sacroiliac joint fusion. He further explained that sacroiliac joint injuries typically result from severe trauma, chronic inflammation, hormonal laxity due to pregnancy, or chronic infection, and that a blunt contusion to the buttocks, without radiographic evidence of a disruption of the sacroiliac joint, is not a plausible mechanism of injury to the sacroiliac joint. Dr. Levine opined that in this particular case, the mechanism of injury may have resulted in soft tissue injuries in and about the lower lumbar spine and buttock, but did not result in any specific injury to the right sacroiliac joint. He noted that the fact that the sacroiliac joint block brought about temporary pain relief, is not directly indicative of sacroiliac joint injury. Dr. Levine noted that the present resolution of appellant's symptoms complex is more than likely due to a gradual improvement due to healing of the ill-defined soft tissue injuries to the lower lumbar region. He concluded that there was no causal relationship between appellant's development of right sacroiliac joint pain and the two employment injuries.

By decision dated September 17, 2014, OWCP denied expansion of appellant's claim to include sacroiliac joint strain, sacroiliac dysfunction, and sacroiliac fusion.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[4] To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical evidence based on a complete factual and medical background, supporting such a causal relationship.[5] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.[6]

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[7]

---

[4] *V.B.*, Docket No. 12-599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[5] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[6] *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

[7] *Manuel Gill*, 52 ECAB 282 (2001).

ANALYSIS

The Board finds that appellant has not established that her additional injuries to her sacroiliac joint were causally related to either the January 11 or August 14, 2008 employment injuries.

OWCP accepted that on January 11, 2008 appellant sustained a right buttocks contusion, right rib contusion, and thoracic strain when she fell on steps in the course of her federal employment. It also accepted a second injury on August 14, 2008 for a back contusion. Appellant later requested that OWCP cover injuries to her sacroiliac joint.

OWCP referred appellant to Dr. Lampert for a second opinion, who opined that there was no evidence that appellant had a sacroiliac joint injury as a result of her accepted employment injuries. On July 12, 2012 appellant's physician, Dr. LeBlanc, opined that appellant's injury, complaints, physical findings and treatment are all consistent with a sacroiliac injury sustained with the original injury of January 11, 2008. In order to resolve the conflict OWCP properly referred appellant to Dr. Levine for an impartial medical examination, pursuant to 5 U.S.C. § 8123(a).

Dr. Levine opined that there was no causal relationship between appellant's pathology with respect to the right sacroiliac joint and the accepted work incidents. He supported this conclusion by noting that there was no radiographic evidence of a sacroiliac joint injury, that the diagnostic testing was not pathognomonic of a sacroiliac joint injury, and that the mechanism of the injury was not such that a sacroiliac joint injury could occur. Dr. Levine indicated that sacroiliac joint injuries typically result from severe trauma, chronic inflammation, hormonal laxity due to pregnancy or chronic infection, and that a blunt contusion to the buttocks, without radiographic evidence of a disruption of the sacroiliac joint, is not a plausible mechanism of injury to the sacroiliac joint. The Board finds that Dr. Levine's impartial opinion negates a causal relationship between appellant's accepted employment injuries and any sacroiliac joint strain and sacroiliac joint dysfunction. Dr. Levine's opinion is probative, rationalized, and is accorded the special weight of an impartial medical examiner.[8]

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 not met her burden of proof to establish that her sacroiliac joint strain and sacroiliac joint dysfunction are causally related either to the January 11 or August 14, 2008 employment injuries.

[8] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 17, 2014 is affirmed.

Issued: October 1, 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