

**United States Department of Labor
Employees' Compensation Appeals Board**

A.C., Appellant)

and)

U.S. POSTAL SERVICE, SOUTH STATION,)
Arlington, VA, Employer)

**Docket No. 16-0624
Issued: August 25, 2016**

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 February 12, 2016 appellant filed a timely appeal from October 1, 2015 and January 14, 2016 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 sustained a consequential injury as a result of a hernia repair performed due to his March 27, 2013 employment injury.

FACTUAL HISTORY

On April 3, 2013 appellant, then a 48-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 27, 2013 he sustained a hernia on the right side in the

¹ 5 U.S.C. § 8101 *et seq.*

performance of duty. He stopped work on April 3, 2013. OWCP accepted the claim for a right inguinal hernia with obstruction, but without gangrene.

On August 1, 2013 Dr. Kimberly B. Suri, a Board-certified surgeon, performed an inguinal hernia repair. Subsequent to his surgery, appellant resumed his usual work duties.

A computerized tomography (CT) scan of the pelvis performed on January 16, 2014 revealed “[p]ostoperative changes of the right inguinal region with no definite findings for recurrent hernia.” In a report dated January 16, 2014, Dr. Suri diagnosed inguinodynia after a repair. OWCP accepted that appellant experienced a recurrence of the need for additional medical care based on Dr. Suri’s January 16, 2014 report.²

On February 17, 2015 appellant filed a recurrence of disability claim (Form CA-2a) beginning January 20, 2015 causally related to his March 27, 2013 employment injury.

By letter dated March 9, 2015, OWCP advised appellant of the evidence necessary to establish a recurrence of disability, including the submission of a reasoned medical report from his physician addressing the causal relationship between his current condition and disability and the accepted employment injury.

Appellant submitted verification of treatment notes dated January 20 to March 13, 2015. In the note dated January 30, 2015, Dr. David K. Yoo, Board-certified in family practice, found that he was disabled from employment from January 30 to February 5, 2015. On February 10, 2015 Dr. Dai Vinh, a Board-certified surgeon, determined that appellant was disabled beginning January 22, 2015. In a note dated March 13, 2015, he diagnosed inguinodynia.

On April 7, 2015 appellant advised that he experienced increasing pain and swelling in the location of his hernia repair.

Dr. Vinh, in a progress report dated April 8, 2015, evaluated appellant for a groin hernia on the right side. He discussed a history of continued pain following a hernia repair in 2013. Dr. Vinh found pain on examination and recommended diagnostic testing. In a verification of treatment note, he determined that appellant was unable to work from April 8 through May 8, 2015. In a duty status report dated April 8, 2015, Dr. Vinh diagnosed inguinodynia and opined that he was unable to perform his usual employment.

In a decision dated April 16, 2015, OWCP found that appellant had not established an employment-related recurrence of disability. It determined that the medical evidence of record was insufficient to show a change in his condition such that he sustained an increase in disability.

Appellant, on April 27, 2015, requested a review of the written record.³

² In decisions dated May 15 and December 10, 2014, OWCP denied appellant’s claim for compensation from March 24 to 29, 2013 as the medical evidence was insufficient to establish that he was disabled from employment.

³ On April 26, 2015 appellant requested reconsideration. OWCP advised him on June 25, 2015 that as he had a hearing pending it would not take action of his reconsideration request.

Dr. Vinh, in a verification of treatment note dated April 23, 2015, related that appellant had “been diagnosed with inguinodynia which could possibly be a complication from a previous hernia surgery.

Appellant underwent a right ilioinguinal nerve block on April 24, 2015.

Dr. Linda M. Cardinal, a Board-certified surgeon, evaluated appellant on May 14, 2015 for inguinodynia not helped by nerve blocks. On examination she found tenderness and movement of the plug, but no recurrent hernia as verified by CT scan. Dr. Cardinal diagnosed inguinodynia on the right “likely due to the genitofemoral branch of the ilioinguinal nerve.” She recommended exploratory surgery “with removal of the mesh plug, excision of the ilioinguinal nerve, and rerepair of the hernia.”

In a decision dated October 1, 2015, an OWCP hearing representative affirmed the April 16, 2015 decision. She found that Dr. Vinh’s opinion regarding the cause of appellant’s inguinodynia was speculative, that Dr. Cardinal did not address causation, and that consequently, appellant had not established an employment-related recurrence of disability beginning January 20, 2015.

On October 13, 2015 appellant requested reconsideration. He submitted a July 29, 2015 preoperative examination diagnosing right inguinodynia and an operative report dated July 30, 2015. In the surgical report, Dr. Cardinal indicated that she performed a right groin exploration and excision of the ilioinguinal nerve. She found that the hernia repair was intact and there “was no evidence of recurrent inguinal hernia, and thus the cord was repositioned in the ileal inguinal canal.” Dissecting the ilioinguinal nerve, Dr. Cardinal found “evidence of a neuroma and dense adherence to what likely was the mesh plug in the internal ring that had been used in the previous hernia repair to invert the sac.” She provided a postoperative diagnosis of chronic right inguinodynia due to entrapment of the ilioinguinal nerve.

By decision dated January 14, 2016, OWCP denied modification of its October 1, 2015 decision.

On appeal appellant contends that his ilioinguinal nerve was caught in the mesh used in his prior hernia repair, resulting in nerve entrapment that caused disability from work and necessitated further surgery.

LEGAL PRECEDENT

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural occurrence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee’s own intentional conduct.⁴ The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.⁵ With respect to consequential injuries, the Board has found that, where an

⁴ See *Albert F. Ranieri*, 55 ECAB 598 (2004).

⁵ *Id.*; *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers’ Compensation* § 10.01 (2005).

injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation, to arise out of and in the course of employment and is compensable.⁶ A claimant bears the burden of proof to establish the claim for consequential injury.⁷

Causal relationship is a medical issue that must be established by rationalized medical opinion evidence.⁸ 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.⁹ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹⁰

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.¹¹ The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.¹²

ANALYSIS

OWCP accepted that appellant sustained a right inguinal hernia with obstruction as a result of a March 27, 2013 work-related injury. He underwent an inguinal hernia repair on August 1, 2013. Appellant returned to his usual employment duties following surgery. On January 16, 2014 Dr. Suri diagnosed inguinodynia after an August 1, 2013 hernia repair. OWCP accepted that he sustained a recurrence of a medical condition in January 2014. Appellant alleged that he sustained a recurrence of disability beginning January 20, 2015 as a result of his March 27, 2013 work injury.

In progress reports dated February 10 to April 8, 2015, Dr. Vinh found that appellant was totally disabled from employment due to inguinodynia. On April 23, 2015 he advised that appellant's inguinodynia might be a result of his prior hernia repair.

⁶ See *Kathy A. Kelley*, 55 ECAB 206 (2004); see also *C.S.*, Docket No. 11-1875 (issued August 27, 2012).

⁷ See *S.P.*, Docket No. 14-900 (issued August 8, 2014).

⁸ See *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

⁹ See *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ See *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).

¹¹ *Jimmy A. Hammons*, 51 ECAB 219 (1999).

¹² 20 C.F.R. § 10.121.

On May 14, 2015 Dr. Cardinal related that a CT scan did not reveal a recurrent hernia. She found that appellant's right inguinal pain likely resulted from the ilioinguinal nerve and recommended surgery to again repair the hernia, remove the mesh plug, and excise the ilioinguinal nerve. Dr. Cardinal performed exploratory surgery on July 3, 2015. She found an intact hernia repair with no recurrent hernia. Dr. Cardinal dissected the ilioinguinal nerve and found a neuroma and adherence of the nerve to the mesh plug used in the prior hernia repair. Subsequent to the surgery, she diagnosed chronic right inguinodynia due to entrapment of the ilioinguinal nerve.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹³ While Dr. Cardinal's opinion does not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial, and probative evidence that he sustained entrapment of the right ilioinguinal nerve as a consequence of surgery to treat his accepted work injury, it is based on an accurate history, detailed surgical findings, and supported by sufficient rationale to require further development of the case record by OWCP.¹⁴

On remand OWCP should obtain an additional opinion from Dr. Cardinal regarding the cause of appellant's disability beginning January 20, 2015 and whether his claim should be expanded to include a consequential injury of right ilioinguinal nerve entrapment. After such development as deemed necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹³ See *A.A.*, 59 ECAB 726 (2008); *Phillip L. Barnes*, 55 ECAB 426 (2004).

¹⁴ See *D.W.*, Docket No. 15-0367 (issued July 14, 2015); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2016 and October 1, 2015 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: August 25, 2016
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