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

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| **C.A., Appellant** | ) | |
| **and** | ) | **Docket No. 15-1789** |
| | ) | **Issued: July 19, 2016** |
| **U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer** | ) | |

*Appearances:*
*Thomas R. Uliase, Esq.*, for the appellant[1]
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On August 27, 2015 appellant, through counsel, filed a timely appeal of a May 19, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

### ***ISSUES***

The issues are: (1) whether appellant has met her burden of proof to establish that her lumbar radiculopathy, lumbar spondylosis, and right hip injury were causally related to her

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

employment injury; and (2) whether appellant met her burden of proof to establish total disability for the period June 1, 2013 to June 13, 2014 and from June 14, 2014 forward causally related to her accepted employment condition.

## ***FACTUAL HISTORY***

On April 16, 2013 appellant, then a 56-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on the same day she was lifting trays of flats from the back of a postal vehicle for delivery and injured her ribs, groin, and hip. She stopped work on April 17, 2013.

Appellant was initially treated by Dr. Joseph Cipriano, a Board-certified family practitioner, from April 16 to May 29, 2013, for pain to the ribs, groin, and right hip. Dr. Cipriano noted that appellant was totally disabled from work.

By letter dated May 13, 2013, OWCP advised appellant that her claim was originally administratively handled to allow medical payments up to $1,500.00, but the merits of the claim had not been formally adjudicated. It advised that, because she had not returned to full duty, her claim would be formally adjudicated. OWCP advised appellant of the type of evidence needed to establish the claim. No additional evidence was received.

In a decision dated June 13, 2013, OWCP denied appellant's claim for compensation finding the medical evidence insufficient to establish a diagnosed medical condition causally related to the claimed event.

On November 6, 2013 appellant requested reconsideration. She submitted a magnetic resonance imaging (MRI) scan of the right hip dated July 5, 2013 which revealed moderate right gluteus medius and minimus tendinosis strain, and right adductor strain. A lumbar spine MRI scan revealed multilevel lumbar spondylosis, annular tears at L3-4, L4-5 with disc desiccation, and mild bilateral neural foraminal stenosis at L2-3 through L5-S1.

Dr. Bruce H. Grossinger, an osteopath and Board-certified neurologist, treated appellant on June 28, 2013. A July 26, 2013 electromyogram (EMG) was normal. Dr. Grossinger noted that appellant underwent platelet rich plasma (PRP) injections into her right hip on July 26, September 6 and December 11, 2013 and March 12, 2014 for severe right hip injury with joint effusion, moderate right trochanteric bursitis with gluteus medius, and gluteus minimus tendinosis with interstitial tearing of the right adductors. In June 28 and September 10, 2013 reports, he noted that she was injured at work on April 16, 2013 when lifting trays of flats from the back of a truck and felt pulling in her ribs, the right intercostal area, the hip, and groin. Dr. Grossinger indicated that appellant sustained a severe hip injury with a joint effusion as well as intercostal neuralgia. He opined that all of appellant's injuries were causally related to her April 16, 2013 work injury. Dr. Grossinger recommended a sacroiliac joint MRI scan to further evaluate her condition. In reports dated October 18, 2013 and January 29, 2014, he treated appellant for severe right hip injury referable to the accident of April 16, 2013. Dr. Grossinger noted that appellant underwent PRP injections of the right hip with 20 percent reduction of pain. Appellant reported pain in the intercostal area of the right rib cage. Dr. Grossinger diagnosed right hip injury with joint effusion, trochanteric bursitis, gait disturbance, intercostal neuralgia,

neuritis, and costochondritis attributable to the April 16, 2013 accident. He noted that appellant was disabled from gainful employment.

Appellant was treated by Dr. Jason Brajer, a Board-certified anesthesiologist, for right-sided thoracic cage pain, hip, and groin pain. Dr. Brajer noted that her symptoms, injuries, and treatment were referable to an April 16, 2013 workers' compensation incident. He performed eight intercostal nerve blocks from August 1, 2013 to February 7, 2014. Dr. Brajer diagnosed low back pain, sacroiliac joint dysfunction, groin pain, and intercostal neuralgia.

Appellant was treated by Dr. Ray S. Abdallah, a chiropractor, from July 3 to October 7, 2013. She reported sustaining an injury at work on April 16, 2013 when she was lifting heavy trays of mail. Dr. Abdallah diagnosed L1-2 lumbar spine disc bulge, L5-S1 lumbar spine disc bulge, post-traumatic right hip joint pain and dysfunction, and post-traumatic bilateral intercostal musculature strain. He noted that appellant was totally disabled due to the injuries sustained on April 16, 2013.

Appellant's record was referred to an OWCP medical adviser and, in a report dated November 22, 2013, he recommended a second opinion evaluation.

Appellant submitted a March 7, 2014 report from Dr. Grossinger who noted that appellant had undergone three facet block injections with limited benefit. Dr. Grossinger diagnosed objective and confirmatory findings consistent with low back pain secondary to sacroiliac joint dysfunction and opined that the above symptoms, injuries, and treatments were referable to the workers' compensation incident of April 16, 2013.

On March 16, 2014 OWCP referred appellant to Dr. Robert A. Smith, a Board-certified orthopedist, for a second opinion examination. In a March 14, 2014 report, Dr. Smith noted findings on examination which demonstrated nonphysiologic pain behavior suggesting embellishment of her symptoms. He noted objectively that the rib cage was symmetric with no evidence of retraction in the intercostal musculature, the ribs were normal with inspiration and expiration, the back revealed no spasm, rigidity or atrophy, and there were no trigger points or deformities present. Examination of the hips revealed full range of motion, there was no evidence of any crepitation or instability, the trochanteric area revealed no swelling or crepitation, there was no evidence of any disruption of the sacroiliac joints, and the neurologic examination was normal. Dr. Smith diagnosed a mild sprain of the right rib cage. He further noted that there was no evidence in the record that appellant had any disruption of her sacroiliac joints in relation to the incident. Dr. Smith noted that studies revealed age-related degenerative disease in the spine and tendinosis in the musculature about the hip. He opined that appellant sustained simple soft tissue sprains and strains that have long since resolved since this incident on April 16, 2013. Dr. Smith opined that appellant sustained a right rib strain, but he did not see any causal connection between appellant's subsequent complaints of pain in her groin, hip, back, and sacroiliac joints as causally related to the April 16, 2013 incident. He noted that appellant received injections into her rib cage area for intercostal nerve block and sacroiliac joint, which he opined was not medically necessary for a simple rib strain. Dr. Smith advised that, if appellant had sustained soft tissue injuries to her back, hip, or groin in the incident in April 2013, they had long since resolved based on his benign objective examination and review structural studies. He noted that there was no structural aggravation of appellant's preexisting degenerative disease and

no objective residuals related to the work incident. Dr. Smith indicated that any soft tissue injury had resolved and appellant's continued symptoms were not related to any organic factors. He noted total disability for a simple soft tissue sprain was 7 to 10 days at which time appellant could have returned to work with short-term restrictions over a few weeks. Dr. Smith advised that appellant did not require any further treatment including chiropractic manipulation, physical therapy, injections, or any type of surgery due to this incident. In a work capacity evaluation, he noted that she reached maximum medical improvement and could work without restrictions.

In a decision dated March 24, 2014, OWCP vacated the decision dated June 13, 2013 and accepted appellant's claim for sprain of the right ribs.

On May 16, 2014 appellant sought to expand her claim to include lumbar radiculopathy, lumbar spondylosis, and right hip injury.

Appellant submitted CA-7 forms claiming compensation for total disability for the period June 1, 2013 to June 13, 2014 and from June 14, 2014 forward.

In a letter dated July 9, 2014, OWCP requested that appellant submit additional information to support her claim for compensation. It asked that she submit medical evidence establishing that the total disability was due to the accepted condition for the period claimed.

Appellant submitted reports from Dr. Grossinger, dated April 23 to May 16, 2014, who opined that appellant had objective and confirmatory findings consistent with low back pain secondary to sacroiliac joint dysfunction with lumbar spondylosis, lumbar facet dysfunction, intercostal neuralgia, and hip pain. Dr. Grossinger noted that the conditions were causally related to the April 16, 2013 work injury. On May 21, 2014 he indicated that on April 16, 2013 appellant was injured while repetitively lifting mail trays and injured her ribs, low back, hips, and groin. Dr. Grossinger noted that Dr. Smith limited appellant's pain to her ribs but that appellant consistently noted issues with her back, hips, ribs, and groin throughout treatment. He noted that appellant had guarding and tenderness in the right costal margin, restricted lumbar mobility, and groin tenderness. Dr. Grossinger opined that appellant's examination was clear, coherent, and without embellishment. He advised that her injuries including trochanteric bursitis, right rib injuries, antalgic gait, restricted lumbar mobility, and multifactorial pain syndrome were causally related to her work injury. Dr. Grossinger noted that appellant was disabled from gainful employment.

By report dated July 23, 2014, Dr. Grossinger performed a comprehensive neurological and orthopedic evaluation of appellant and reviewed Dr. Smith's report. He disagreed with Dr. Smith, noting that he had minimized appellant's injuries and improperly concluded that her injuries were merely a "soft tissue injury." Dr. Grossinger opined that Dr. Smith was incorrect and noted that, if appellant merely had a soft tissue injury, she would have recovered immediately after the accident and would not be undergoing intensive neurological and regenerative treatment. He noted that appellant continued to have severe low back pain radiating to the right leg and foot, right hip pain, and difficulty sitting and standing. Dr. Grossinger found no evidence of symptom magnification or embellishment. He diagnosed a severe right hip injury with joint effusion, trochanteric bursitis, and tendinosis with right lumbosacral radiculopathy and sacroiliac dysfunction, which were all causally related to the April 16, 2013 employment injury.

Dr. Grossinger disagreed with Dr. Smith and indicated that the employing establishment position required appellant to stand, bend, lift, and twist and opined that these activities were beyond her physical capabilities. He determined that appellant remained disabled from gainful employment.

In a decision dated August 11, 2014, OWCP denied appellant's claim for compensation for the period beginning June 14, 2014. In a letter dated August 11, 2014, it requested that appellant submit additional evidence to support her earlier claims for compensation for the period June 1, 2013 to June 13, 2014.

Appellant submitted an August 27, 2014 report from Dr. Grossinger who noted that appellant presented with sharp pain in her back extending to the right leg and foot. Dr. Grossinger noted findings of right hip tenderness with evidence of trochanteric bursitis, hypertonicity, restricted movement in the right hip, and gait antalgic. He diagnosed hip injury with right trochanteric bursitis, right sacroiliac dysfunction, and lumbar radiculopathy. Dr. Grossinger noted that appellant remained totally disabled.

In a decision dated September 25, 2014, OWCP denied appellant's claim for compensation for the period June 1, 2013 to June 13, 2014.

On September 30, 2014 appellant requested an oral hearing for the August 11 and September 25, 2014 decisions. The hearing was held on January 28, 2015. Appellant submitted October 1 and 31, 2014 reports from Dr. Grossinger who noted appellant's right rib, right-sided groin, and hip symptoms. Dr. Grossinger diagnosed right trochanteric bursitis, sacroiliac dysfunction, lumbar radiculopathy, and right intercostal neuralgia causally related to the April 16, 2013 work injury. On March 6, 2015 he advised that appellant continued to be symptomatic with her diagnosed conditions causally related to the April 16, 2013 work injury. Dr. Grossinger indicated that generally, as a postal employee, appellant was required to take heavy parcels and items weighing up to approximately 50 pounds and lift them to waist level, twist at the hips, and place them from one end of the vehicle to another and subsequently deliver them. Appellant reported moving heavy parcels and trays around in her vehicle multiple times a day and Dr. Grossinger opined that the repetitive nature of her job, which involved constant twisting and carrying heavy materials and having to raise them to rib level could cause rib pain. He further noted that repetitive heavy lifting, carrying, bending, pushing, and pulling can affect the low back and hip areas causing unleveling of the hips and tailbone area which can result in groin pain.

In a decision dated May 19, 2015, an OWCP hearing representative affirmed OWCP's decisions dated August 11 and September 25, 2014. He also found that Dr. Grossinger's opinion was not sufficient to establish that additional conditions were employment related.

## ***LEGAL PRECEDENT -- ISSUE 1***

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.[3]

[3] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

Causal relationship is a medical issue that must be established by rationalized medical opinion evidence.[4] 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.[5] 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.[6]

Section 8123(a) of FECA provides that, if there is 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.[7] The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination.[8] When 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.[9]

## ***ANALYSIS -- ISSUE 1***

Appellant alleges that she developed work-related lumbar radiculopathy, lumbar spondylosis, and a right hip injury as a result of lifting trays of flats from her postal truck on April 16, 2013. OWCP accepted the claim, as noted, for sprain of right ribs. It did not accept lumbar radiculopathy, lumbar spondylosis, and right hip conditions. The Board finds that there is a conflict in medical opinion between Dr. Smith, OWCP's referral physician, and Dr. Grossinger, appellant's treating physician, both of whom are Board-certified specialists in their respective fields, regarding whether appellant developed lumbar radiculopathy, lumbar spondylosis, and a right hip injury as a result of her work injury.

In his March 14, 2014 report, Dr. Smith diagnosed a mild sprain of the right rib cage. He noted an essentially normal examination with no evidence of retraction in the intercostal musculature. The ribs were normal, the back had no spasm or trigger points, the hips were

[4] *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

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

[6] *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).

[7] 5 U.S.C. § 8123(a); *see Y.A.*, 59 ECAB 701 (2008).

[8] 20 C.F.R. § 10.321.

[9] *V.G.*, 59 ECAB 635 (2008).

without any crepitation or instability, and the trochanteric area had no swelling or crepitation, and there was no evidence of disruption of the sacroiliac joints. Dr. Smith noted appellant's demonstrated nonphysiologic pain behavior suggesting symptom embellishment. He opined that appellant had a right rib strain, but he saw no causal connection between appellant's subsequent complaints of pain in her groin, hip, back, and sacroiliac joints as causally related to the April 16, 2013 employment injury. Dr. Smith opined that appellant had simple soft tissue sprains and strains that would have resolved in 7 to 10 days of the April 16, 2013 incident and appellant's continued symptoms did not relate to any organic factors. He found no objective residuals of her employment-related injuries and advised that appellant required no further treatment.

By contrast, on July 23, 2014 Dr. Grossinger disagreed with Dr. Smith, noting that he improperly concluded appellant's injuries were merely "soft tissue injury." He opined that appellant continued to have severe low back and hip pain radiating to the right leg and foot, and difficulty sitting and standing. Dr. Grossinger noted objective findings of difficulty sitting and standing, antalgic gait, right trochanteric region tenderness, spasm in the iliac crest, lumbar paraspinous regions, and sacroiliac dysfunction, positive straight leg test, and tenderness over the costal region. He found no evidence of symptom magnification. Dr. Grossinger opined that appellant had a severe right hip injury with joint effusion, trochanteric bursitis, and tendinosis with right lumbosacral radiculopathy and sacroiliac dysfunction, which were all causally related to the April 16, 2013 work injury.

The Board therefore finds that a conflict in medical opinion has been created regarding whether OWCP should accepted additional conditions as being employment related.

Section 8123 of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the employee's physician, OWCP shall appoint a third physician who shall make an examination.[10]

The case will be remanded to OWCP to refer appellant, the medical record, and a statement of accepted fact to an appropriate specialist, to obtain an impartial opinion regarding whether the April 16, 2013 work injury caused or aggravated additional diagnosed conditions. Following this and all other development deemed necessary, OWCP shall issue a *de novo* decision in the case.

## ***CONCLUSION***

The Board finds that the case is not in posture for decision.[11]

[10] *Supra* note 7.

[11] The Board finds that it is unnecessary to address the second issue, regarding compensable disability, in view of the Board's disposition of the first issue.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the May 19, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further action consistent with this decision.

Issued: July 19, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board