United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	**Docket No. 16-0652**
	)	**Issued: July 27, 2016**
DEPARTMENT OF THE INTERIOR, FISH & WILDLIFE SERVICE, Elkins, WV, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 10, 2016 appellant filed a timely appeal from an August 18, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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 this case.

[1] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from August 18, 2015, the date of OWCP's last decision was February 14, 2016. As February 14, 2016 fell on a Sunday, the appeal would have been due the next business day, which was February 15, 2015. Since using February 19, 2016, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is February 10, 2016, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has established sacroiliac joint instability causally related to her January 27, 2006 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.[3] The fact and circumstances outlined in the prior Board decision are incorporated herein by reference. The facts relevant to the instant appeal are set forth below.

On April 20, 2006 appellant, then a 28-year-old fish and wildlife biologist, filed a traumatic injury claim (Form CA-1) alleging that on January 27, 2006 she injured her left hip, low back, and left shoulder when she fell down a slope. OWCP accepted the claim for left hip strain, thoracic strain, and lumbar strain.[4]

On August 3, 2007 appellant underwent arthroscopic surgery on her hip and a labral debridement, capsulorrhaphy, iliopsoas tendon release, and iliotibial band release.[5]

In a progress report dated November 7, 2007, Dr. Vonda J. Wright, a Board-certified orthopedic surgeon, discussed appellant's complaints of left hip pain that had resolved after a debridement of a labral tear. Appellant experienced pain after trying to jog and bike and "since that time she has had left-sided S1 pain radiating down into the left ischium. She reports that this pain was not present after the surgery until this jogging event and she is now in a significant amount of pain." Dr. Wright diagnosed S1 pain and recommended a "fluoroscopically-guided S1 joint injection."

Appellant, on November 30, 2007, underwent a computerized tomography (CT) guided "diagnostic and therapeutic left S1 joint injection." The report indicated that after the injection her pain subsided.

On July 10, 2008 Dr. Gary S. Gruen, an attending Board-certified orthopedic surgeon, diagnosed chronic left S1 joint instability.[6]

OWCP referred appellant, on September 16, 2008, to Dr. Charles A. Lefebure, a Board-certified orthopedic surgeon, for a second opinion regarding the relationship between her current condition and disability and her accepted work injury. In an October 14, 2008 report,

[3] Docket No. 11-1617 (issued April 2, 2012).

[4] In decisions dated August 1 and December 16, 2006, OWCP denied appellant's claim for continuation of pay as she did not report the injury on an approved form within 30 days.

[5] Appellant, on June 14, 2007, underwent an injection of the left hip.

[6] In a decision dated December 15, 2006, OWCP denied appellant's claim for intermittent time lost form work from August 11 to September 6, 2006. On April 23, 2007 it denied her request for compensation due to disability on September 20, 2006. By decision dated December 17, 2007, OWCP denied modification of the December 15, 2006 and April 23, 2007 decisions. On February 20, 2008 it found that appellant had not established a recurrence of disability beginning December 29, 2007 due to her accepted employment injury.

Dr. Lefebure diagnosed a labral tear of the left hip due to the January 27, 2006 fall. He related, "The question of left S1 joint instability is not established as seen by x-ray of the S1 joints. Further, investigation into that condition could be determined by x-ray of the S1 joints." Dr. Lefebure recommended an magnetic resonance imaging (MRI) scan study of the left S1 joint or repeat stress x-rays.

On February 25, 2009 OWCP authorized an MRI scan study of the S1 joints or further x-ray studies to determine if appellant had S1 joint instability.

Dr. Gruen, in a report dated March 19, 2009, discussed appellant's history of a fall at work January 27, 2006 and subsequent sacroiliac joint instability. He indicated that x-rays were "indeterminate for sacroiliac joint instability which is not uncommon." On March 20, 2009 Dr. Gruen related that he specialized in sacroiliac joint instability and advised that MRI scan studies and stork view x-rays were insufficient to "accurately diagnose sacroiliac joint instability…." He opined that appellant sustained "sacroiliac joint instability despite the negative stress views that she has had on her sacroiliac joints."

On September 11, 2009 Dr. Philip J. Chua, an osteopath, diagnosed left hip strain, thoracic strain, and lumbar strain due to appellant's January 27, 2006 employment injury. He attributed the left sacroiliac joint instability, thoracic strain, and left pelvis joint pain to the January 27, 2006 work injury and requested that OWCP expand acceptance of appellant's claim to include the listed conditions.

An OWCP medical adviser reviewed the evidence of record on December 10, 2009 and found no objective evidence of S1 joint instability. He opined that appellant's physicians had not supported their diagnosis of joint instability with either diagnostic or clinical evidence and asserted, "The claimant's S1 joint pain is well established and is related to the accepted conditions in this case (as is left hip pain), however, there is no objective evidence for S1 joint instability in this case."

On December 15, 2009 OWCP informed Dr. P. Chua that it was denying his request for expansion of the claim to include left sacroiliac joint instability and left pelvis joint pain. In an undated response received February 22, 2010, Dr. P. Chua advised that S1 joint instability could be made using clinical findings rather than diagnostic studies.

A second OWCP medical adviser reviewed the medical evidence on February 27, 2010. He found no objective evidence of S1 joint disease and attributed appellant's sacroiliac joint pain to probable left hip or low back radiculopathy.

By decision dated March 2, 2010, OWCP denied expansion of appellant's claim to include sacroiliac joint instability/ left pelvis joint pain.

On March 1, 2011 appellant requested reconsideration.[7] In a decision dated June 6, 2011, OWCP denied modification of its March 2, 2010 decision.

[7] In a report dated April 27, 2011, Dr. Chua diagnosed pelvic joint pain and indicated that appellant was waiting for authorization to get physical therapy.

Appellant appealed to the Board. In a decision dated April 2, 2012, the Board set aside the June 6, 2011 decision.[8] The Board found that a conflict existed between Dr. Gruen and Dr. P. Chua and the medical advisers on the issue of whether appellant sustained sacroiliac joint instability as a result of her accepted employment injury. The Board remanded the case for OWCP to refer her for an impartial medical examination.

On May 21, 2012 OWCP referred appellant to Dr. Peter K. Thrush, a Board-certified orthopedic surgeon, for an impartial medical examination. In an evaluation dated June 22, 2012, Dr. Thrush reviewed the history of injury and medical treatment received. On examination he found normal strength and sensation of the hip, knee and ankle, no visible atrophy, no medial lateral or anterior posterior instability, and a slight reduction in left hip motion with no instability. Dr. Thrush noted that appellant complained of pain in the left S1 joint with range of motion and tenderness to palpation. He noted that a bone scan or MRI scan study the sacroiliac joints bilaterally would aid in verifying or disproving inflammation of the sacroiliac joint inflammation. Dr. Thrush further related that a stork test used to test instability of the sacroiliac joint was normal. He concluded that appellant had no objective evidence of sacroiliac joint instability. Dr. Thrush related, "[Appellant] does have pain [in] the sacroiliac joint to compression. However, this is a fairly common physical finding and can be due to a number of different factors, including referred pain from the lumbar spine." He agreed with Dr. Gruen's opinion that appellant would not benefit from surgery. Dr. Thrush advised that it was possible that her symptoms might result from early left hip arthritis as a result of her labral tear. He found that, considering the accepted conditions of strains of the left hip and thoracic and lumbar spine, appellant could resume her usual employment. Dr. Thrush determined that her subjective complaints would prevent her returning to her regular position.

By decision dated July 13, 2012, OWCP denied appellant's request to expand her claim to include sacroiliac joint instability/left pelvis joint pain. It found that the opinion of Dr. Thrush established that she did not have sacroiliac joint instability.

On July 24, 2012 appellant, through counsel, requested a telephone hearing.

In a progress report dated August 23, 2012, Dr. Catherine M. Chua, an osteopath, evaluated appellant for continued pain at the S1 joint. She found it unusual that a physician had never "seen an S1 joint injury." Dr. C. Chua related, "I find that hard to believe as I treat them quite often." She diagnosed pelvic joint pain and sprains of the hip, thigh, thoracic region, lumbar spine, and sacroiliac.

A telephone hearing was held on November 16, 2012. In a decision dated January 31, 2013, an OWCP hearing representative affirmed the July 13, 2012 decision.

The January 31, 2013 decision was returned to OWCP as undeliverable. OWCP resent a copy to appellant on May 22, 2013.

[8] *Supra* note 3.

Appellant, on February 5, 2014, requested reconsideration.[9] In a statement dated January 31, 2014, she argued that Dr. Lefebure, Dr. Thrush, and the medical advisers failed to consider the November 30, 2007 CT guided left S1 joint injection. Appellant advised that bone scans and MRI scan studies of the S1 joints were not reliable in diagnosing S1 joint dysfunction, but that the S1 joint injection was used as a diagnostic test. She maintained that the opinion of Dr. Thrush was not rationalized or supported by scientific research or objective evidence. Appellant reviewed her history of medical treatment. She questioned why Dr. Thrush had discounted the sacroiliac joint as the reason for her pain and did not discuss the diagnostic value of the S1 joint injection.

By decision dated July 3, 2014, OWCP denied appellant's request for reconsideration as it was untimely filed and failed to establish clear evidence of error.

In a progress report dated July 9, 2013, Dr. C. Chua treated appellant for a sacroiliac sprain and hip/thigh sprain. She noted that her workers' compensation claim was not approved for S1 joint instability.

Appellant appealed to the Board. In a decision dated April 21, 2015, the Board set aside the July 3, 2014 OWCP decision.[10] The Board found that, as the January 31, 2013 hearing representative's decision was returned as undeliverable, appellant had rebutted the presumption of receipt under the mailbox rule. The Board found that she therefore had one year from May 22, 2013 to request reconsideration. The Board remanded the case for OWCP to consider appellant's request for reconsideration under the standard for timely reconsideration requests.

On August 25, 2014 Dr. C. Chua discussed appellant's back pain in the sacroiliac area after a January 25, 2006 work injury. She diagnosed chronic sacroiliac sprain and a sprain of the hip and thigh at an unspecified site.

Dr. Denzel W. Hawkinberry, Board-certified in anesthesiology, evaluated appellant on October 6, 2014 for low back and left buttock pain.[11] He noted that she "fell off a cliff while in the woods several years ago and dislocated her left S1 joint." Dr. Hawkinberry provided examination findings and diagnosed low back pain, an inflamed sacroiliac joint, and sacroiliac instability.

OWCP, in a decision dated August 18, 2015, denied modification of its March 2, 2010 decision. It noted that the November 30, 2007 joint injection report did not provide a diagnosis other than pain at the S1 joint.

On appeal appellant describes the procedural history of her case before OWCP and the Board. She maintains that OWCP should have considered the November 30, 2007 finding of S1

[9] The record also contains reports from a physician assistant and a nurse practitioner dated November 26, 2014 to June 23, 2015.

[10] Docket No. 15-0479 (issued April 21, 2015).

[11] On June 8, 2015 Dr. C. Chua diagnosed lumbar degenerative disc disease and noted that appellant had a motor vehicle accident in March 2015 that "exacerbated the pain in her back from her comp[ensation] injury." She diagnosed a chronic sprain of the hip and thigh and lumbar disc disease without myelopathy.

pain after injection as diagnostic of S1 joint dysfunction. Appellant contends that bone scans, stork view x-rays, and MRI scan studies are of little value in diagnosing sacroiliac joint instability. She discusses medical literature supporting her position. Appellant critiques the medical evidence of record, asserting that the opinions of the medical adviser and referral physicians are speculative and not contradicted by outside sources. She also advises that contrary to Dr. Thrush's finding, a March 24, 2006 emergency room report refers to her employment injury and diagnoses a sacroiliac joint strain.

LEGAL PRECEDENT

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[12] The opinion of the physician must be based on a complete factual and medical background of the claimant,[13] must be one of reasonable medical certainty[14] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[15]

Section 8123(a) 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.[16] The implementing regulations states 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. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[17]

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.[18]

ANALYSIS

OWCP accepted that appellant sustained left hip strain, thoracic strain, and lumbar strain causally related to a January 27, 2006 employment injury. On August 3, 2007 appellant underwent a left hip arthroscopy to repair an anterior superior labral tear. On November 30, 2007 she underwent a CT-guided diagnostic and therapeutic S1 joint injection on the left side on

[12] *John J. Montoya*, 54 ECAB 306 (2003).

[13] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[14] *Supra* note 12.

[15] *Judy C. Rogers*, 54 ECAB 693 (2003).

[16] 5 U.S.C. § 8123(a).

[17] 20 C.F.R. § 10.321.

[18] *Barry Neutuch*, 54 ECAB 313 (2003) and *David W. Pickett*, 54 ECAB 272 (2002).

the recommendation of Dr. Wright, who noted that she experienced pain at S1 on the left after she tried to jog and bike following her hip surgery.

On prior appeal, the Board determined that a conflict existed between appellant's physicians, Dr. Gruen and Dr. Chua, and the medical advisers regarding whether her claim should be expanded to include sacroiliac joint dysfunction. OWCP referred her to Dr. Thrush, a Board-certified orthopedic surgeon, for an impartial medical examination.

When a case is referred to an impartial medical examiner for the purpose of resolving a conflict, the opinion of such specialist, is sufficiently well rationalized and based on a prior factual and medical background, must be given special weight.[19] In a report dated June 22, 2012, Dr. Thrush found normal hip strength and sensation, no atrophy, and a slight loss of hip motion without instability. He discussed appellant's complaints of pain with motion of the left S1 joint and tenderness to palpation, but noted that this was a common finding that could arise from other factors, including lumbar spine pain. Dr. Thrush concluded that appellant had no evidence of a sacroiliac joint injury at the time of her work injury. He provided rationale for his opinion by noting that a stork test used to show instability of the sacroiliac joint was normal. Dr. Thrush also found no objective evidence of sacroiliac joint instability based on the lack of diagnostic studies. As his report is detailed, well rationalized and based on a proper factual background, Dr. Thrush's opinion is entitled to the special weight accorded an impartial medical examiner.[20]

The remaining evidence is insufficient to overcome the weight given to Dr. Thrush as impartial medical examiner. On August 23, 2012 Dr. C. Chua noted that appellant had seen a referee physician who had not treated joint injuries at S1. She diagnosed sacroiliac, hip, thigh, thoracic, and lumbar sprains. On July 9, 2013 Dr. C. Chua diagnosed a hip/thigh and sacroiliac sprain. As she did not specifically address the cause of the sacroiliac sprain, her opinion is of little probative value.[21]

In a report dated August 25, 2014, Dr. C. Chua noted that appellant had experienced sacroiliac pain subsequent to a January 25, 2006 employment injury. She diagnosed a hip and thigh sprain and a chronic sacroiliac sprain. While Dr. C. Chua reviewed the history of the January 25, 2006 injury, she did not provide an independent opinion regarding whether the work injury caused a sacroiliac condition, and thus her opinion is insufficient to overcome the weight of the impartial medical examiner's opinion and meet appellant's burden of proof.

On October 6, 2014 Dr. Hawkinberry discussed appellant's history of a fall some years ago and dislocation of the left S1 joint. He found an inflamed sacroiliac joint and instability. Dr. Hawkinberry, however, did not address causation and relied upon a history of appellant dislocating her left S1 joint at the time of her fall, which has not been accepted by OWCP.[22]

[19] *See J.M.*, 58 ECAB 478 (2007); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

[20] *See J.M., id*; *Katheryn E. Demarsh*, 56 ECAB 677 (2005).

[21] *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

[22] *See Conard Hightower, id.*; *M.W.*, 57 ECAB 710 (2006).

On appeal appellant asserts that the OWCP referral physicians and OWCP medical advisers should have considered the November 30, 2007 S1 joint injection as objective evidence of sacroiliac joint instability. The report from the November 30, 2007 diagnostic and therapeutic left S1 joint injection indicated that she had reduced pain subsequent to the injection, but did not otherwise contain a diagnosis or causation finding. Thus, the study is insufficient to support causal relationship.[23] Appellant further argues that the reports from the OWCP referral physicians are speculative and not supported by medical literature. A lay opinion, however, does not carry any probative weight.[24]

Appellant further contends that a March 24, 2006 emergency room report refers to her work injury and contains a diagnosis of sacroiliac joint strain. Dr. Thrush, in his review of the medical records, noted that the March 24, 2006 report was difficult to read and that he could not see if the report contained a history of the January 27, 2006 injury. He did not rely on this evidence in reaching his opinion and thus it does not affect the disposition of the case.

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained sacroiliac joint instability causally related to her January 27, 2006 employment injury.

[23] *See C.M.*, Docket No. 15-0386 (issued April 23, 2015).

[24] *See L.P.*, Docket No. 10-0319 (issued October 12, 2010).

ORDER

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

Issued: July 27, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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