United States Department of Labor
Employees' Compensation Appeals Board

Y.A., Appellant	)	
and	)	**Docket No. 17-0551**
	)	**Issued: December 11, 2017**
DEPARTMENT OF AGRICULTURE,	)	
U.S. FOREST SERVICE,	)	
Rio Grande National Forest, CO, 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
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 11, 2017 appellant filed a timely appeal from a July 27, 2016 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 established a recurrence of total disability from November 26, 2012 to October 21, 2013 causally related to an accepted acetabular fracture.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on July 21, 1983 appellant, then a 21-year-old volunteer, was riding in a jeep which overturned, causing her to sustain a closed fracture of the left acetabulum.[2] Following emergency treatment, appellant was hospitalized in traction for one month. She received total disability compensation from July 22, 1983 on the daily and later periodic rolls.

On June 11, 1984 OWCP referred appellant for a second opinion examination with Dr. Charles Ellis, a Board-certified orthopedic surgeon, to determine her work ability. Dr. Ellis could ascertain no physical reason for any organic symptoms 11 months after multiple high-impact pelvic fractures and attributed her lingering lumbar and pelvic pain to a suspected psychological disturbance.

On August 8, 1984 Dr. Anthony B. Serfustini, an attending Board-certified orthopedic surgeon, found that appellant had reached maximum medical improvement (MMI). He opined that the "exact nature and duration and extent of any type of post[-]traumatic arthritis will be time dependent."

In a January 18, 1985 report, Dr. Ken A. Collinsworth, a physician reviewing the file for OWCP, opined that the "possibilities of early degenerative changes developing in the future ha[d] been considered," but had not yet developed objectively.

Appellant performed a series of private sector jobs, including cashier and social services director, from April 1985 through August 3, 2012. She then remained off work.

In a November 26, 2012 report, Dr. Jacob F. Patterson, an attending Board-certified orthopedic surgeon, noted a history of the July 21, 1983 injury, and related appellant's account of increasing immobility and pain in the left hip, interfering with activities of daily living. He obtained x-rays showing "a degenerative hip with some protrusion and osteophyte formation." The left hip was "bone-on-bone in the lateral view." Dr. Patterson diagnosed advanced arthritis of the left hip. He opined that appellant's presentation was "more post-traumatic than rheumatoid radiographically," and recommended a left hip replacement. In December 17, 2012 reports, Dr. Patterson noted that she walked with a limp. He obtained x-rays showing "medial joint space loss consistent with post-traumatic degenerative arthritis of the hip." Dr. Patterson explained that "[b]ased on the sequence of events and the appearance of [appellant's] normal right hip, [he] believe[d] that this [was] a direct result of the on-the-job injury and pelvis fracture" in 1983. He diagnosed post-traumatic degenerative joint disease of the left hip.

On December 11, 2012 appellant filed a notice of recurrence (Form CA-2) claiming that the left acetabular fracture had significantly worsened such that she was totally disabled for work beginning November 26, 2012. She described increasing immobility and pain in the left hip beginning in 2007.

In a February 28, 2013 letter, OWCP notified appellant of the additional evidence needed to establish her claim for a recurrence of disability, including a narrative report from her

[2] Appellant also fractured the pubic ramus and ischial bones.

attending physician explaining how and why the resolved 1983 left acetabular fracture had worsened. It afforded her 30 days to submit such evidence.

In response, appellant submitted her March 25, 2013 statement, noting that she had no injuries to the left hip after the accepted July 21, 1983 fracture and no medical treatment for the left hip since her recovery in 1985. She explained that the physicians who treated or examined her from 1983 to 1985 all opined that the fracture would eventually result in degenerative arthritis of the left hip. Appellant reported that she had worked in office and retail settings in the private sector, with occasional participation in recreational walking and aerobics. She described a gradual loss of left hip motion beginning in 2008, with a limp developing within the past year. Dr. Patterson recommended a total left hip replacement.

Appellant submitted additional medical records relating to the 1983 fracture. Dr. Dale T. Berkbigler, an attending internist, noted on October 31, 1983 that appellant had sustained "fractures of the right obdurator foramen with interior displacement of the proximal fragment at the fracture of the superior ramus of the pubis with" a nondisplaced fracture across the junction of the pubis and rami, and a "fracture of the left acetabulum at the junction of the ilium and ischial bones."

In March 11, 2013 reports, Dr. Patterson reviewed medical records from 1983 through 1985. He noted that, since the injury, appellant worked steadily in a variety of private sector jobs, including counseling and child care. Appellant experienced decreased mobility and the onset of left hip pain beginning in 2007, which worsened through November 2012 when she sought medical treatment. Dr. Patterson noted that, although appellant had been diagnosed with rheumatoid arthritis, this involved "primarily the hands and feet." He opined that her "history, exam[ination], and x-ray findings [were] entirely consistent with post-traumatic [degenerative joint disease] of the left hip caused in essence by" the 1983 left acetabular fracture. "[Appellant] has had no further trauma to that left hip of any significant degree to explain the deterioration of the joint," and there was no evidence of rheumatoid arthritis in the left hip. "The x-ray appearance of the left hip [was] entirely consistent with post-traumatic degenerative joint disease and not at all consistent with the appearance of a rheumatoid hip." Dr. Patterson diagnosed degenerative arthritis in the left hip "due primarily to her acetabular fracture which occurred on the job in 1983 and subsequent post-traumatic arthritis." He emphasized that there was "no contribution from rheumatoid arthritis or injury other than the acetabular fracture which occurred on the job in 1983."

On April 9, 2013 OWCP obtained a second opinion from Dr. William V. Watson, a Board-certified orthopedic surgeon. Dr. Watson reviewed the medical record and a statement of accepted facts. On examination, he observed a "Trendelenburg lurch to the left side," difficulty in standing on appellant's left leg, marked limitation in left hip motion in all planes, and tenderness of the left hip on palpation. Dr. Watson diagnosed degenerative joint disease of the left hip causally related to the accepted July 21, 1983 fracture. He opined that a total left hip arthroplasty was appropriate and necessary due to the progression of appellant's occupational condition. Dr. Watson explained that he agreed "completely with Dr. Patterson on this case. This young female sustained a high impact fracture of the acetabulum and over the years it has gone on to degenerative changes." He commented that he completely disagreed with Dr. Ellis'

June 11, 1984 report, as it was axiomatic in the medical literature that acetabular fractures resulted in eventual degenerative arthritis.

Dr. Patterson performed a total left hip arthroplasty on April 23, 2013 with insertion of prosthesis. During surgery, he noted "[c]omplete eburnation of bone, status post old acetabular fracture with central migration of the head, and loss of all articular cartilage."

On May 21, 2013 OWCP expanded the claim to accept local secondary osteoarthritis of the left pelvic region and thigh. It approved the total left hip arthroplasty.

In a June 8, 2013 report, Dr. Patterson found an essentially normal gait with excellent motion of the left hip. Appellant had gone fishing and was able to walk well with a cane. A pelvic x-ray showed the implant was in good position without loosening or other complication. On September 18, 2013 Dr. Patterson opined that appellant was doing well. He would require periodic follow-up examinations, but no additional treatment. Dr. Patterson opined that appellant attained MMI on October 21, 2013 and could return to work with no restrictions.

In an October 29, 2013 letter, appellant claimed wage-loss compensation benefits from October 1, 2012 through October 21, 2013, the date she attained MMI.

On February 19, 2014 appellant claimed a schedule award (Form CA-7). She submitted a January 29, 2014 impairment rating from Dr. Miguel Castrejon, a Board-certified physiatrist, finding 21 percent permanent impairment of the left lower extremity. On April 29, 2014 an OWCP medical adviser concurred with Dr. Castrejon's rating.

By decision dated June 13, 2014, OWCP granted appellant a schedule award for 21 percent permanent impairment of the left hip. The period of the award ran from June 3, 2013 to July 31, 2014.

In an August 27, 2014 letter, appellant again requested wage-loss compensation from October 1, 2012 through October 21, 2013. OWCP responded by September 3, 2014 letter, explaining that it was unclear why she claimed wage loss on the basis of disability when she no longer worked after August 2012. It noted that appellant must file a formal claim for compensation (Form CA-7).

Dr. Patterson contended in a November 17, 2014 report that OWCP incorrectly utilized June 3, 2013 as the date of MMI, as he did not find that appellant could resume full activities until October 21, 2013.

On December 2, 2014 appellant filed a claim for compensation (Form CA-7) for total wage loss from November 26, 2012 to October 21, 2013. In a December 2, 2014 letter, she contended that the delay between stopping work on August 3, 2012 and undergoing surgery on April 23, 2013 was due to OWCP's administrative delay in approving the arthroplasty and that she was medically unable to seek employment while awaiting surgery. Appellant provided an employment history showing that she worked as a cashier from May 3, 2011 to February 25, 2012, as a social service assistant from March 1 to May 1, 2012, and as a social services director from May 2 to August 3, 2012.

In a January 11, 2016 report, Dr. Patterson reviewed appellant's history of injury. He opined that, on her initial presentation on November 26, 2012, she was "extremely disabled and unable to work. [Appellant] had previously been employed as a social services director at a health care center, but she was not able to seek or perform similar work given her degenerative arthritis." Appellant was unable to sit or stand for prolonged periods without severe pain, and was "obviously in need of a total hip arthroplasty." Dr. Patterson noted that, following recovery from hip replacement surgery, she desired to find employment in child care, which required lifting, squatting, and lowering herself to the floor. He opined that appellant was "temporarily and totally disabled for work at [appellant's] desired occupation from the time she first saw [him] for the hip pain on November 26, 2012 through her date of [MMI], October 21, 2013." Appellant was medically unable to work during this period due to deterioration of her hip, with loss of virtually all range of motion and muscle tone in the left lower extremity.

In a June 10, 2016 letter, OWCP notified appellant of the additional evidence needed to establish her claim for a recurrence of total disability from November 26, 2012 through October 21, 2013, including a narrative report from her attending physician explaining how and why the accepted left acetabular fracture, degenerative arthritis, and total left hip arthroplasty would disable her from work for the claimed period. It afforded her 30 days to submit such evidence.

Appellant responded by June 26, 2016 letter, requesting that OWCP review Dr. Patterson's January 11, 2016 narrative report, which provided his rationale as to why the accepted fracture, arthritis, and surgery disabled her from work from November 26, 2012 through October 21, 2013.

By decision dated July 27, 2016, OWCP denied appellant's claim for a recurrence of total disability compensation from November 26, 2012 through October 21, 2013, finding that the medical evidence of record was insufficient to establish causal relationship. It found that Dr. Patterson's January 11, 2016 report of record was "not contemporaneous and [did] not address temporary total disability (TTD)."

LEGAL PRECEDENT

OWCP's implementing regulations define a recurrence of disability as "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."[3]

When an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician, who on the basis of a complete and accurate factual and medical history, concludes

[3] 20 C.F.R. § 10.5(y); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2.a (June 2013). *See also Philip L. Barnes*, 55 ECAB 426 (2004).

that the condition is causally related to the employment injury and supports this conclusion with sound medical reasoning.[4]

ANALYSIS

OWCP accepted that appellant sustained a left acetabular fracture on July 21, 1983, with local secondary osteoarthritis of the left hip and thigh, necessitating a total left hip arthroplasty performed on April 23, 2013. Following the injury, appellant returned to full-duty work in the private sector through August 3, 2012. On May 21, 2013 OWCP accepted local secondary osteoarthritis of the left pelvic region and thigh. Appellant claimed a recurrence of total disability with wage loss from November 26, 2012 through October 21, 2013. She thus has the burden of providing sufficient evidence, including rationalized medical evidence, to establish the causal relationship between her accepted work injury and the claimed period of disability.[5]

In support of her claim, appellant provided reports from Dr. Patterson, a Board-certified orthopedic surgeon. Dr. Patterson obtained x-rays on November 26, 2012 demonstrating bone-on-bone degenerative osteoarthritis of the left hip. He opined that appellant required a total left hip arthroplasty. Dr. Watson, a Board-certified orthopedic surgeon and second opinion physician, provided an April 9, 2013 report concurring with Dr. Patterson's assessment. OWCP accepted that the degenerative arthritis was caused by the accepted July 21, 1983 acetabular fracture. Dr. Patterson performed a total left hip arthroplasty on April 23, 2013, approved by OWCP. Appellant attained MMI on October 21, 2013.

Dr. Patterson provided a January 11, 2016 narrative report addressing the claimed period of total disability. He opined that appellant was totally disabled for work as of her initial presentation on November 26, 2012 through October 21, 2013 due to end-stage degenerative arthritis with severe loss of muscle tone in the left lower extremity, and recovery from the April 23, 2013 left hip arthroplasty.

OWCP denied appellant's recurrence claim on July 27, 2016, finding that Dr. Patterson's reports were insufficiently rationalized to establish total disability from work for the claimed period. It found that Dr. Patterson's January 11, 2016 narrative report was "not contemporaneous and did not address TTD." The Board notes that he treated appellant from November 26, 2012 through October 21, 2013, the entire claimed period of disability, but at no time prior to January 11, 2016 did he address the issue of temporary total disability.

The Board finds that although Dr. Patterson's opinion is insufficiently rationalized to meet appellant's burden of proof to establish disability for work for the entire claimed period,[6] the record is sufficient to support a period of disability of sufficient probative quality surrounding the accepted hip replacement in April 2013.

[4] *Ricky S. Storms*, 52 ECAB 349 (2001); *Helen Holt*, 50 ECAB 279 (1999).

[5] *Ricky S. Storms, id.*

[6] *See Frank 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).

The case must be remanded to OWCP for preparation of a statement of accepted facts concerning the accepted left acetabular fracture and appellant's medical history, and referral of the matter to an appropriate medical specialist, consistent with OWCP's procedures, to determine the extent of disability associated with the accepted total hip arthroplasty. Following this and any other development deemed necessary, OWCP shall issue an appropriate merit decision in the case.

On appeal appellant contends that Dr. Patterson's reports are sufficient to establish that she was totally disabled for work from November 26, 2012 through October 21, 2013. As stated above, the case will be remanded to OWCP for additional development on this issue.

CONCLUSION

The Board finds that the case is not in posture for a decision. The case will be remanded for additional development.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 27, 2016 is set aside, and the case remanded for additional development consistent with this decision and order.[7]

Issued: December 11, 2017
Washington, DC

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

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

[7] Colleen Duffy Kiko, Judge, participated in the original decision but was no longer a member of the Board effective December 11, 2017.