

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

_____)	
R.P., Appellant)	
)	
and)	Docket No. 17-0428
)	Issued: April 19, 2018
DEPARTMENT OF JUSTICE, BUREAU OF)	
PRISONS, Lexington, KY, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 19, 2016 appellant, through counsel, filed a timely appeal from an October 25, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.³

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.*

³ The record provided the Board includes evidence received after OWCP issued its October 25, 2016 decision. The Board's review is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether OWCP properly denied authorization for sacroiliac joint arthrodesis.

FACTUAL HISTORY

On March 10, 2010 appellant, then a 43-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging injuries sustained to his back, left hip, and right shoulder as a result of slipping on a wet floor in the performance of duty. He stopped work on September 26, 2010 and has not returned. OWCP accepted appellant's claim for left hip contusion, right shoulder contusion, lumbar back sprain, acromioclavicular right shoulder strain, and left shoulder rotator cuff sprain.

OWCP paid appellant wage-loss compensation benefits on the periodic rolls commencing October 24, 2010. Appellant underwent an August 10, 2011 authorized left shoulder surgery.

Effective September 24, 2014, OWCP reduced appellant's compensation benefits as he had the capacity to earn wages as a customer complaints clerk, Department of Labor, *Dictionary of Occupational Titles*, No. 241.367-014, at the rate of \$504.40 per week.

By decision dated December 18, 2014, OWCP denied modification of the loss of wage-earning capacity determination.

On January 8, 2016 OWCP received a medical authorization request for arthrodesis (fusion surgery) of the left sacroiliac joint. In support of the request, appellant submitted diagnostic studies dated May 23, 2014 and June 8, 2015 of the lumbar spine and pelvis.

Multiple reports from Dr. Harry Lockstadt, an attending Board-certified orthopedic surgeon, dated April 22, 2015 through January 7, 2016 were received. He diagnosed right and left sacroiliac joint dysfunction and indicated that appellant required sacroiliac joint arthrodesis, first left side then right side. Dr. Lockstadt advised that appellant had failed all nonoperative treatment and a bilateral sacroiliac joint arthrodesis was the next logical course of treatment as alternative diagnoses had been ruled out.

In his reports, Dr. Lockstadt provided an assessment of work-related traumatic right and left sacroiliac joint dysfunction with severe symptoms which occurred secondary to a twisting sensation through the lower spine. He indicated that appellant's imaging studies were consistent with right and left sacroiliac joint dysfunction. Dr. Lockstadt noted that there was no evidence to indicate that appellant's employment injury had returned to preinjury status. He advised that the accepted injury and related conditions were still present and disabling.

In a November 2, 2015 report, Dr. Lockstadt advised that he had not found any evidence that the sacroiliac joint dysfunction preexisted the work injury. He noted that his records showed that appellant's symptoms in his lower back were a consequence of his March 10, 2010 work-related injury.

In a January 20, 2016 letter, OWCP denied authorization for the arthrodesis sacroiliac joint procedure. It found that appellant's sacroiliac dysfunction was a nonwork-related condition and preexisted his employment injury.

On February 25, 2016 OWCP received a January 7, 2016 authorization request for arthrodesis sacroiliac joint.

In a February 15, 2016 report, Dr. Melanie Ledford, a Board-certified physiatrist, provided an assessment of chronic pain, lumbar degenerative disc disease, lumbar spondylosis, lumbar facet arthropathy, and sacroiliac joint dysfunction. She noted that appellant's low back pain radiated into his bilateral hips, left greater than right, into his legs to the toes.

In a development letter dated February 26, 2016, OWCP advised appellant of the evidence needed in order to expand his case to include sacroiliac dysfunction and authorize the requested medical treatment. Appellant was afforded 30 days to provide the necessary medical evidence.

In response, OWCP received a duplicate copy of Dr. Ledford's February 15, 2016 report. It also received a request from appellant to have the acceptance of his case expanded to include injury to his right and left sacroiliac joints.

On March 24, 2016 OWCP advised appellant that it previously reviewed the medical evidence and had found in a prior December 18, 2014 decision that the sacroiliac dysfunction was preexisting and not causally related to the March 10, 2016 work injury. Appellant was advised to follow his appeal rights if he disagreed with the December 18, 2014 decision.

By decision dated March 31, 2016, OWCP denied appellant's request for authorization of arthrodesis sacroiliac joint. It found that Dr. Ledford failed to provide the requisite medical rationale and an accurate and complete medical history as to what caused or aggravated the sacroiliac joint dysfunction. OWCP also referenced its prior decision which found that the sacroiliac dysfunction was preexisting and not causally related to the March 10, 2015 work injury.

On July 7, 2016 appellant requested reconsideration. April 21 and June 16, 2016 hospital reports from Saint Joseph East Hospital were received accompanied by physical therapy notes dated June 21 through July 20, 2016.

Medical reports from Dr. Lockstadt dated April 21 through September 15, 2016 were also received. In his May 5, 2016 report, he indicated that appellant had traumatic work-related sacroiliac arthropathy. Dr. Lockstadt also indicated that there was no evidence in the medical record of any preexisting sacroiliac joint dysfunction. He opined that appellant suffered a work-related traumatic right and left sacroiliac joint dysfunction with severe symptoms which occurred secondary to a twisting sensation through the lower spine. Dr. Lockstadt indicated that appellant's claim had been accepted for a left hip contusion, which involved contusing the structures around the left hip including the supportive sacroiliac joint ligaments. He explained that, when a patient fell on his left side contusing the left hip, this caused a force to be transmitted through the left pelvis, left sacroiliac joint, and caused a ligamentous injury at the sacroiliac joint on the left side. Dr. Lockstadt also noted that the claim was accepted for lumbar back sprain. He advised that this included the ligaments that support the back and the sacroiliac. Dr. Lockstadt explained that, with a sprain, the ligamentous structures no longer provide the support necessary to support the

sacroiliac joint. He additionally noted that appellant's left side was worse than his right side. Dr. Lockstadt also provided indicators as to why appellant was a good candidate for sacroiliac joint arthrodesis minimal invasive surgery. He concluded that the evidence-based medicine was overwhelming that appellant suffered a traumatic sacroiliac joint dysfunction. Dr. Lockstadt reasoned that no evidence had been provided to him that this was a preexisting condition.

In an April 21, 2016 report, Dr. Ledford continued to provide assessments of chronic pain, lumbar degenerative disc disease, lumbar spondylosis, lumbar facet arthropathy, and sacroiliac joint dysfunction.

Medical reports were received from Dr. James Oliver, a pain management specialist and anesthesiologist, dated April 21 through September 15, 2016. He noted the history of injury and provided assessments of lumbar disc disease, lumbar spinal stenosis, lumbar facet arthritis, and chronic S1 joint dysfunction.

On September 26, 2016 OWCP requested that its medical adviser review the medical reports and address whether the requested procedure was medically necessary for and causally related to the accepted conditions.

In an October 17, 2016 report, OWCP's medical adviser reviewed the provided statement of accepted facts (SOAF) and the medical record. He advised that OWCP had not accepted the condition of sacroiliac joint dysfunction. The medical adviser opined that the requested arthrodesis sacroiliac joint was not causally related to the accepted medical conditions, but rather was due to the degenerative changes noted on appellant's computerized tomography (CT) scan. He indicated that appellant had an accepted condition of hip contusion and that the treatment for contusion was not sacroiliac joint fusion. Thus, the medical adviser advised that the proposed arthrodesis of the sacroiliac joint was not causally related to the accepted medical condition. He additionally indicated that, while appellant has met many of the criteria for sacroiliac joint fusion, he had not met all and that all the criteria must be documented completely before such surgery would be medically necessary. Therefore, the medical adviser concluded that the proposed arthrodesis of the sacroiliac joint was not medically necessary.

By decision dated October 25, 2016, denied modification of its March 31, 2016 decision. It found that the weight of the medical evidence rested with its medical adviser who opined that the proposed arthrodesis of the sacroiliac joint was not causally related to the accepted medical conditions and was not medically necessary.

LEGAL PRECEDENT

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree, or the period of disability, or aid in lessening the amount of monthly compensation.⁴ While OWCP is obligated to pay for treatment of employment-related conditions, the employee

⁴ 5 U.S.C. § 8103; see *Thomas W. Stevens*, 50 ECAB 288 (1999).

has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁵

In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on OWCP's authority being that of reasonableness.⁶ Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.⁷ To be entitled to reimbursement of medical expenses, a claimant has the burden of proof to establish that the expenditures were incurred for treatment of the effects of an employment-related injury or condition. Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.⁸ In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.⁹

ANALYSIS

OWCP accepted appellant's claim for left hip contusion, right shoulder contusion, lumbar back sprain, acromioclavicular right shoulder strain, and left shoulder rotator cuff sprain. On January 8, 2016 it received a medical authorization request for arthrodesis of the left sacroiliac joint. OWCP denied appellant's request for authorization of surgery.

The Board finds that the case is not in posture for decision as there is an unresolved conflict in medical opinion evidence as to whether the sacroiliac joint dysfunction is causally related to the employment injury.

In order for the proposed arthrodesis of the sacroiliac joint to be considered, it must first be determined whether a causal relationship exists between the accepted employment injury and the condition of sacroiliac joint dysfunction. Dr. Lockstadt opined that appellant suffered a work-related traumatic right and left sacroiliac joint dysfunction with severe symptoms which occurred secondary to a twisting sensation through the lower spine. He explained that appellant's claim was accepted for a left hip contusion, which involved contusing the structures around the left hip including the supportive sacroiliac joint ligaments. Dr. Lockstadt explained that it was common that, when a patient falls on his left side contusing the left hip, this caused a force to be transmitted through the left pelvis, left sacroiliac joint, and causes a ligamentous injury at the sacroiliac joint on the left side. He also noted that the claim was accepted for lumbar back sprain, which included

⁵ *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

⁶ *See D.K.*, 59 ECAB 141 (2007).

⁷ *Minnie B. Lewis*, 53 ECAB 606 (2002).

⁸ *M.B.*, 58 ECAB 588 (2007).

⁹ *R.C.*, 58 ECAB 238 (2006).

the ligaments that support the back and the sacroiliac. Dr. Lockstadt explained that, with a sprain, the ligamentous structures no longer provided the support necessary to support the sacroiliac joint.

OWCP's medical adviser, however, opined that the proposed arthrodesis of the sacroiliac joint was not causally related to the accepted medical conditions. He indicated that appellant had an accepted hip contusion and explained that treatment for contusion did not include a sacroiliac joint fusion. The medical adviser explained that the sacroiliac joint dysfunction was due to degenerative changes noted on his CT scan. He did not discuss appellant's accepted lumbar strain or address whether the work injury contributed to appellant's degenerative changes of the sacroiliac joint dysfunction.

If there is disagreement between OWCP's referral physician and appellant's physician, OWCP will appoint a third physician who shall make an examination.¹⁰ For a conflict to arise, the opposing physicians' viewpoints must be of virtually equal weight and rationale.¹¹ The Board finds that the medical opinions of Dr. Lockstadt and OWCP's medical adviser are of equal weight. The dispute between these physicians centers on their opinions of whether the work injury caused or aggravated appellant's sacroiliac joint dysfunction for there to be causal relationship between the accepted conditions and a need for surgery, which ostensibly supported their respective opinions of the proposed arthrodesis of the sacroiliac joint. Accordingly, there was an unresolved conflict in medical opinion regarding the causal relationship of his sacroiliac joint dysfunction.

Because there is an unresolved conflict in medical opinion, pursuant to 5 U.S.C. § 8123(a), the case will be remanded to OWCP for referral of appellant, together with the medical record and an updated SOAF, to an appropriate Board-certified physician or specialist in the proper field of medicine for an impartial medical examination as to the causal relationship of appellant's sacroiliac joint dysfunction and the proposed arthrodesis of the sacroiliac joint. After such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

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

¹¹ *Darlene R. Kennedy*, 57 ECAB 414 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 25, 2016 is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 19, 2018
Washington, DC

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

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

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