United States Department of Labor
Employees' Compensation Appeals Board

K.C., Appellant	)	
and	)	**Docket No. 17-1377**
	)	**Issued: December 17, 2018**
DEPARTMENT OF THE ARMY,	)	
Fort Dix, NJ, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 5, 2017 appellant, through counsel, filed a timely appeal from a May 3, 2017 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.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish that the acceptance of his claim should be expanded to include additional conditions of fracture of the femoral head

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id*.

and high-grade contusion to adductor muscle in the hip as causally related to his August 31, 2016 employment injury.

FACTUAL HISTORY

On September 7, 2016 appellant, then a 36-year-old field surface mechanic, filed a traumatic injury claim alleging that, on August 31, 2016, he dislocated his hip while riding as a passenger in a Polaris returning from the motor pool area while in the performance of duty. He explained that his knee caught on the gate and dislocated his hip. The employing establishment checked a box marked "yes" in response to whether appellant was injured in the performance of duty.

A statement from W.B., a coworker, also described the work incident. He noted that he was driving a vehicle at approximately five miles per hour with appellant as the front passenger. As they were moving through a small gate, appellant caught his right leg on the fence and yelled in pain. Mr. Bielecki noted that he immediately stopped the vehicle and notified his supervisor, who notified emergency medical response.

In a development letter dated September 20, 2016, OWCP informed appellant of the type of evidence needed to establish his claim and requested that he submit such evidence within 30 days. Specifically, it noted that it had not received medical evidence in support of his claim. OWCP requested that appellant submit a narrative report from his attending physician, including an explanation of how appellant's August 31, 2016 employment incident caused a diagnosed condition.

Emergency room records dated August 31, 2016 reveal that Dr. Laura Iavicoli, Board-certified in emergency medicine, noted that appellant presented with a leg/groin injury. She related that he was on a vehicle traveling at less than 10 miles per hour when he caught his leg on a fence. Dr. Iavicoli noted that appellant had severe groin pain at that time. She examined him and diagnosed a dislocated right hip.

In an August 31, 2016 report, Dr. Mitesh K. Patel, a physician specializing in sports medicine, examined appellant and noted that he had a right hip sprain and dislocation. He indicated that appellant was totally disabled from employment activities and advised that a magnetic resonance imaging (MRI) scan was pending.

An August 31, 2016 x-ray of the pelvis, right femur, right hip, and right knee, read by Dr. Alex Langman, a Board-certified diagnostic radiologist, revealed an inferior and posterior dislocation of the right hip. No displaced fracture was noted. Dr. Langman recommended a reevaluation when the dislocation was reduced.

An August 31, 2016 x-ray of the right hip, read by Dr. William Didie, a Board-certified diagnostic radiologist, revealed right femoral head dislocation with reduction, with no discrete fracture.

In a September 16, 2016 report, Dr. Patel noted that appellant had post-traumatic right hip pain. He indicated that appellant had related that he was riding in an open vehicle at work on August 31, 2016, with his right leg hanging out of the vehicle, when someone opened a gate and

his right leg got caught. Thereafter, appellant dislocated his right hip. Dr. Patel noted that appellant went to an emergency room and a physician had prescribed pain medication. He advised that appellant was off work and was complaining of severe pain in the right hip radiating into the thigh and down to the leg. Appellant noted that there was no numbness or tingling and no back pain and he could not comfortably sleep at night. He denied previous injury to the right hip.

In a note dated September 16, 2016, Dr. Patel indicated that x-rays of the right hip revealed a congruent femoroacetabular joint, with no fracture and no loose bodies. He explained that his physical examination revealed weakness with right hip flexion, abduction, adduction, and extension; pain with log roll maneuver; and pain with internal or external rotation passively of the right hip joint. Dr. Patel related that a straight leg raise test in the supine position was negative. The left hip demonstrated no periarticular tenderness and had good strength and stability. Dr. Patel assessed right hip pain post right hip dislocation. He recommended a right hip MRI scan to rule out occult fracture as well as to evaluate soft tissue structures and to rule out any intrarticular pathology. Dr. Patel also indicated that after the MRI scan he would keep appellant off work to rest, but thereafter commence an aggressive rehabilitation program to restore function of the right hip joint. In an October 14, 2016 note, he diagnosed sprain/pain of the right hip with dislocation and opined that appellant was temporarily totally disabled. In an accompanying note of the same day, Dr. Patel noted that appellant returned for follow up regarding his right hip pain. He advised that his right hip was dislocated at work on August 31, 2016. Dr. Patel advised that appellant continued to struggle with weight bearing, could not sleep comfortably at night, and had limitation of motion along with weakness when he tried to elevate the right hip. He noted that the recent MRI scan demonstrated a subchondral fracture of the femoral head with mild depression, maximum three millimeter, and high-grade contusion of adductor group of muscles were also noted. Dr. Patel diagnosed pain in the right hip and a humeral head fracture of the right hip. He related that, at this point, appellant was six months postinjury and therefore he was going to refer him to a specialist[3] to see if he was a candidate for open reduction and internal fixation of the hip. Dr. Patel wanted appellant to not bear weight on the right leg and to remain off work.

By decision dated October 24, 2016, OWCP denied appellant's claim, finding that causal relationship had not been established. It explained that, although the medical evidence of record provided a diagnosis in connection with the accepted August 31, 2016 work incident, it was not well-rationalized and was therefore insufficient to establish causal relationship.

On November 3, 2016 appellant requested a review of the written record by an OWCP hearing representative.

OWCP subsequently received copies of reports previously of record.

By decision dated February 1, 2017, OWCP's hearing representative affirmed the October 24, 2016 decision. She found that there was no medical report of record that provided an affirmative opinion that the August 31, 2016 employment incident resulted in the diagnosed conditions. The hearing representative explained that Dr. Patel initially described the injury as occurring on August 31, 2016, but subsequently indicated that it occurred on August 23, 2016.

[3] Dr. Patel made a recommendation for evaluation by Dr. Gregory Deirmengian, a Board-certified orthopedic surgeon.

Dr. Patel also indicated on October 14, 2016, that appellant was "six months out," but did not indicate what had occurred six months prior to that date. She found that Dr. Patel had not provided medical rationale sufficient to establish that the diagnosed conditions were causally related to the employment incident of August 31, 2016.

In a February 9, 2017 letter, appellant indicated that he was sending additional evidence from his physician and verified that the physician erred when sending his information to the office. He requested that OWCP review the letter and provide a decision soon, so he could receive surgery to repair his fractured hip.

On April 20, 2017 appellant requested reconsideration.

In a February 6, 2017 report, Dr. Patel noted that he had initially examined appellant on September 16, 2016. He explained that appellant came in with complaints of right hip pain. Dr. Patel advised that, on that date, x-rays revealed that the joint was in congruent alignment and not dislocated. Furthermore, no obvious fractures were noted. He indicated that his physical examination demonstrated considerable weakness with right hip flexion, abduction, adduction, and extension and also explained that appellant had pain with log roll maneuver and pain with internal and external rotation of the right hip. Dr. Patel noted that appellant was sent for a right hip MRI scan to further evaluate the joint. He explained that it was important to note that his original chart note dictated on September 16, 2016, had the incorrect date of injury. Dr. Patel explained that while he reported that appellant was injured on August 23, 2016, this was incorrect, as the actual injury occurred on August 31, 2016. He related that appellant had followed up on October 14, 2016 to review his MRI scan at which time he indicated that the MRI scan demonstrated a subchondral fracture of the femoral head and high-grade contusion to the adductor group of the muscles in his hip.

In this report Dr. Patel further advised that appellant had been off work since his injury and had been referred to a hip surgeon, Dr. Deirmengian. He also explained that his office visit note on October 14, 2016, incorrectly noted under treatment plan that the patient was "six months out" from the injury, when it was supposed to read as "six weeks out." Dr. Patel noted that the mistakes in documentation delayed appellant's care, and that appellant had been unable to return to work secondary to pain. He also added that appellant was in need of a consultation with Dr. Gregory Deirmengian to determine an optimal treatment plan, so he could get back to work.

By decision dated May 3, 2017, OWCP accepted appellant's claim for dislocation of the right hip. However, it explained that the additional diagnosed conditions of fracture of the femoral head and high-grade contusion to adductor muscle in the hip, were not accepted because Dr. Patel had not provided a sufficiently rationalized medical opinion which explained exactly how the work incident caused or aggravated the diagnosed hip fracture and contusion. OWCP specifically noted that the x-ray on the date of injury failed to reveal a fracture of the hip and that Dr. Patel had not clarified this discrepancy or interpreted the diagnostic testing reports, nor did he discuss how he concluded that the fracture was causally related to the work event.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim, including the fact that he or she is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[5]

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.[6] To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.[7] 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.[8] 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.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include the additional conditions of fracture of the femoral head and high grade contusion to adductor muscles in the hip as causally related to his August 31, 2016 employment injury.

The initial emergency room reports from Dr. Patel dated August 31, 2016 included a diagnosis of sprain and right hip dislocation as a result of the work incident. Additionally, the initial records indicated that appellant was post an inferior and posterior dislocation of his right hip. Furthermore, initial x-rays did not reveal a fracture of the hip. The August 31, 2016 x-ray of the pelvis, right femur, right hip, and right knee, read by Dr. Langman, revealed post inferior and posterior dislocation of the right hip. He specifically advised that "[n]o displaced fracture was

[4] *Supra* note 1.

[5] *C.W.*, Docket No. 17-1636 (issued April 25, 2018); *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *See V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[7] *See M.W.*, 57 ECAB 710, 717 (2006); *John D. Jackson*, 55 ECAB 465, 473 (2004).

[8] *See John W. Montoya*, 54 ECAB 306, 308 (2003).

[9] *See H.H.*, Docket No. 16-0897 (issued September 21, 2016); *James Mack*, 43 ECAB 321, 329 (1991).

noted." In addition, the August 31, 2016 x-ray of the right hip revealed right femoral head dislocation with reduction, with "no discrete fracture."

Dr. Patel continued to treat appellant. In his September 16, 2016 report, he assessed pain in the right hip and right hip pain post right hip dislocation. Dr. Patel recommended a right hip MRI scan to rule out occult fracture as well as to evaluate soft tissue structures and to rule out intrarticular pathology. In an October 14, 2016 report, he diagnosed sprain/pain right hip dislocation and opined that appellant was totally disabled from work. In a separate report also dated October 14, 2016, Dr. Patel noted that appellant's MRI scan demonstrated a subchondral fracture of the femoral head with mild depression, maximum three millimeter, high-grade contusion of adduction group of muscles. He then provided a February 6, 2017 report and again related that the MRI scan demonstrated a subchondral fracture of the femoral head and high-grade contusion to the adductor group of the muscles in his hip.

The Board finds that Dr. Patel has not provided a rationalized medical opinion which explained how the accepted employment injury on August 31, 2016 caused or aggravated additional conditions including fracture of the femoral head and high-grade contusion to adductor muscle in the hip. This is especially important as the initial x-rays following the employment injury did not reveal a fracture and he expressly advised that no obvious fractures were noted. Dr. Patel did not clarify or interpret the diagnostic testing reports, nor did he discuss how he subsequently concluded that appellant now had a fracture that was related to the August 31, 2016 employment injury. The Board finds that Dr. Patel has not provided an explanation or rationale supporting his conclusion that the additional conditions were causally related to the accepted employment injury. Medical conclusions unsupported by rationale are of diminished probative value.[10]

On appeal appellant asserts that his injury occurred on August 31, 2016. He contends that while he received continuation of pay from September 1, 2016 until October 15, 2016, he needed to be paid from until his hip surgery was complete. The Board notes that the issue in this case is whether the additional diagnosed conditions of fracture of the femoral head and high-grade contusion to adductor muscle in the hip are causally related to his August 31, 2016 employment injury. As found above, the evidence of record is insufficient to establish additional conditions are causally related to the accepted employment injury. Appellant, therefore, has not met his burden of proof.

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 met his burden of proof to establish that the acceptance of his claim should be expanded to include additional conditions of fracture of the

[10] *See Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

femoral head and high-grade contusion to adductor muscle in the hip as causally related to his August 31, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2018
Washington, DC

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

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

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