United States Department of Labor
Employees' Compensation Appeals Board

N.T., Appellant	)	
	)	
and	)	**Docket No. 18-1620**
	)	**Issued: May 6, 2019**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Minneapolis, MN, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 24, 2018 appellant filed a timely appeal from a July 12, 2018 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]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the July 12, 2018 decision, OWCP received additional evidence. 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 additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish additional conditions including depression, anxiety, post-traumatic stress disorder, bilateral hip, and lower back conditions, causally related to her accepted November 10, 2009 employment injury.

FACTUAL HISTORY

On December 9, 2009 appellant, then a 33-year-old pharmacy technician, filed a traumatic injury claim (Form CA-1) alleging that on November 10, 2009 she injured her left knee after tripping over a stack of totes. She did not stop working. OWCP accepted the claim for left knee strain and authorized left kneecap repair/arthroscopic surgery, which occurred on July 26, 2012. It also authorized the removal of left support implant, which occurred on February 7, 2014 and total left knee arthroplasty, which occurred on January 21, 2015.[3]

By letter dated March 17, 2015 OWCP paid appellant compensation on the periodic rolls for temporary total disability with the first payment covering the period March 6 to April 4, 2015.

In a letter dated August 11, 2015, appellant requested that OWCP expand the acceptance of her claim to include consequential conditions, which included heart disease, sleep apnea, heart failure, Systemic Inflammatory Response Syndrome (SIRS), hypoxemia, cardiac dysrhythmias, acute respiratory failure, vascular comp vessel, esophageal reflux, arthropathy, long-term use of anticoagulants, joint replaced knee, abnormal serum enzyme level, and depressive disorder. She alleged that she sustained these conditions following approved total knee replacement surgery on January 21, 2015.

In progress notes dated February 26, 2016, Dr. Katie Nixdorf, a physician Board-certified in neurology and pain medicine, provided examination findings. She diagnosed chronic left knee pain, left pain with mechanical and neuropathic features, abnormal gait, depression, ankle pain, lumbar radiculopathy, and sleep apnea, and left sacroiliac joint dysfunction and piriformis tenderness.

In a continuity of care document, Dr. Nixdorf noted that appellant was seen on March 7, 2016 and provided examination findings. Diagnoses included major depressive disorder, recurrent episode, mild, ankle pain, gastroesophageal reflux disease (GERD), knee pain, and abnormal gait. As of November 11, 2015, Dr. Nixdorf found the condition of mild major depression resolved.

In a letter dated July 6, 2016, appellant again requested that the acceptance of her claim be expanded to include additional conditions. She stated that her work injury caused depression, anxiety, GERD, nerve pain, muscle spasms, hip conditions, sciatica, and right knee pain. Appellant alleged weight gain from the medications she has taken for her injury. She also requested that OWCP accepted Body Mass Index (BMI) over 40 as she wanted to have gastric bypass surgery.

[3] By decision dated February 8, 2016, OWCP granted appellant a schedule award for 23 percent left lower extremity permanent impairment.

In a July 12, 2016 report, Dr. Nixdorf reported that appellant was seen for pain complaints. She provided examination findings and reported no change in medical history. Dr. Nixdorf diagnosed abnormal gait, chronic left knee pain, leg pain with mechanical and neuropathic features, sleep apnea, depression, and history of left sacroiliac joint dysfunction and piriformis tenderness.

By decision dated July 29, 2016, OWCP expanded acceptance of appellant's claim to include the conditions of left leg and knee sprain, lower left leg joint pain, gait abnormality, left patella dislocation, limb cramp, and lower extremity venous embolism, and deep vessels thrombosis.[4]

Dr. Nixdorf, in progress notes dated August 30 and October 25, 2016, and February 7, 2017, provided examination findings and diagnosed abnormal gait, chronic left knee pain, leg pain with mechanical and neuropathic features, sleep apnea, depression, and history of left sacroiliac joint dysfunction and piriformis tenderness. She noted that appellant was having gastric bypass surgery on October 3, 2016.

In progress notes dated February 7, 2017, Dr. Annie Burton, a physician Board-certified in anesthesiology and pain medicine, provided examination findings. She diagnosed abnormal gait, chronic left knee pain, leg pain with mechanical and neuropathic features, sleep apnea, depression, and history of left sacroiliac joint dysfunction and piriformis tenderness.

In reports dated March 12 and May 8, 2017, John Patrick O'Laughlin, Ph.D., a clinical psychologist, reported appellant that had been involved in a motor vehicle accident requiring hospitalization for head trauma. Appellant complained of anxiety, neck and head pain, and extreme headaches. She also reported having panic attacks. Dr. O'Laughlin found appellant's pain had been aggravated by her nonwork-related automobile accident.

In a May 12, 2017 report, Dr. Nixdorf provided examination findings unchanged from prior reports. She diagnosed chronic left knee pain, abnormal gait, depression, leg pain with neuropathic and mechanical features, sleep apnea, morbid obesity, mild-to-moderate concussion, headaches of cervicogenic nature and sacroiliac joint dysfunction, and piriformis syndrome.

Dr. O'Laughlin, in a June 12, 2017 report, noted appellant's complaints of chronic knee pain, cervicalgia due to a motor vehicle accident, and significant right hip pain.

In progress notes dated July 5, 2017, Dr. O'Laughlin reported that appellant complained of headaches, moderate worsening of her knee pain, and stress from her workload.

Dr. Nixdorf, in progress notes dated July 11, 2017, noted examination findings. She reported that, since the last examination on May 12, 2017, appellant had been involved in an automobile accident where she was rear-ended at a stoplight and her car was totaled. Dr. Nixdorf diagnosed abnormal gait, chronic left knee pain, leg pain with mechanical and neuropathic features, sleep apnea, depression, sacroiliac joint dysfunction and piriformis tenderness, mild-to-

[4] By decision dated February 8, 2016, OWCP granted appellant a schedule award for a 23 percent left lower extremity permanent impairment, which ran for 66.24 weeks from January 23, 2016 to April 30, 2017.

moderate concussion from involvement in an automobile accident with residual memory loss and visual issues, and headaches of a cervicogenic nature.

In notes dated September 6, 2017, Dr. O'Laughlin reported appellant had post-concussion symptoms involving visual issues and headaches, which were interacting with work stress. Appellant related that she suffered from confusion and anxiety symptoms as well as other post-concussion symptoms.

Dr. O'Laughlin, in October 11, 2017 notes, reported that appellant complained of knee and back pain and headaches. He attributed her headache to occipital headache from her automobile accident. Appellant stated while her pain had increased that she was more stress about her return to work and the pressure to resume full-time work.

On October 17, 2017 appellant was seen by Dr. Nixdorf for complaints of pain. Dr. Nixdorf diagnosed headaches of a cervicogenic nature, mild-to-moderate concussion from a motor vehicle accident, residual memory and visual loss from the concussion, depression, sacroiliac joint dysfunction and piriformis syndrome, leg pain with mechanical and neuropathic features, and chronic left knee pain.

In a November 14, 2017 standard diagnostic assessment report, Dr. David E. Adson evaluated appellant for post-concussion syndrome. His diagnoses included recurrent major depressive disorder, panic disorder, post-traumatic stress disorder, generalized anxiety disorder, somatic symptom disorder with predominant pain, history of conversion disorder, and opioid use disorder. Dr. Adson reported that appellant had a long history of anxiety and depression and had been doing well until her March 2017 automobile accident. He opined that appellant's problem was a combined depression and post-concussion syndrome.

In a February 6, 2018 report, Dr. Nixdorf continued to diagnose chronic left knee pain, abnormal gait, depression, leg pain with neuropathic and mechanical features, sleep apnea, morbid obesity, mild-to-moderate concussion, headaches of cervicogenic nature, and sacroiliac joint dysfunction and piriformis syndrome.

On April 30, 2018 appellant requested that OWCP expand the acceptance of her claim to include depression, anxiety, post-traumatic stress disorder, bilateral hip osteoarthritis, and lower back pain as consequential injuries. She alleged that she developed severe depression from post-traumatic stress disorder and the constant pain she experienced prior to being diagnosed with left knee dislocation. Appellant also alleged that, as a result of the misdiagnosis of her left knee condition, her back and hips were impacted. She further alleged that, as the result of a heavy work load, she developed anxiety.

In a May 30, 2018 development letter, OWCP informed appellant that the evidence of record was insufficient to warrant expansion of the acceptance of her claim to include the conditions she identified. It noted that her depression and anxiety were preexisting conditions, which dated back to when she attended college and referenced a November 10, 2009 report. OWCP also noted that in March 2017 appellant had been involved in a motor vehicle accident, which resulted in a diagnosis of postconcussion syndrome and anxiety. It advised her as to the

medical and factual evidence required to support her request for expansion of her accepted conditions. OWCP afforded appellant 30 days to submit the requested evidence.

In response to OWCP's request, appellant submitted undated statements, noting that her depression began in 1996 while at college due to homesickness, but had been management by medication. She related that due to the pain from her work injury she became very depressed. Additionally, prior to her work injury she had been very active. Next, appellant related that as a result of her March 18, 2017 motor vehicle accident she sustained a traumatic brain injury, which created a lot of anxiety. She stated that, prior to the motor vehicle accident, her anxiety had been at a high level, which she attributed to having to perform the work of three people.[5]

By decision dated July 12, 2018, OWCP denied appellant's request to expand the acceptance of her claim to include depression, anxiety, post-traumatic stress disorder, lower back pain, and bilateral hip osteoarthritis as causally related to her November 10, 2009 work injuries.

LEGAL PRECEDENT

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 injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting causal relationship.[7] Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[9] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10]

[5] To the extent that appellant is alleging new employment factors, *i.e.*, overwork, as causing or aggravating her anxiety, this could be considered a new occupational disease claim.

[6] *See T.E.*, Docket No. 18-1595 (issued March 13, 2019); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[7] *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[8] *Y.C.*, Docket No. 17-1938 (issued January 7, 2019); *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

[9] *F.H.*, Docket No. 18-1238 (issued January 18, 2019); *P.M.*, Docket No. 18-0287 (issued October 11, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[10] *H.R.*, Docket No. 18-0640 (issued *V.W.*, 58 ECAB 428 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish additional emotional, bilateral hip, and lower back conditions as causally related to her accepted November 10, 2009 employment injury.

Dr. O'Laughlin, in reports dated March 12 and May 8, 2017, opined that appellant's pain had been aggravated by her nonwork-related automobile accident. In a June 12, 2017 report, he noted appellant's complaints of stress from her workload, headache, and moderate worsening of right knee pain. On September 6, 2017 Dr. O'Laughlin noted that appellant's work stress was interacting with her headaches and visual issues. As he did not attribute appellant's conditions to the November 10, 2009 employment injury, his opinion is of diminished probative value.[11] Thus, the reports from Dr. O'Laughlin are insufficient to support appellant's request to expand the acceptance of her claim.

The remaining medical evidence is also insufficient to warrant expansion of the acceptance of appellant's claim. Dr. Nixdorf's diagnoses included sleep apnea, mild-to-moderate concussion, cervicogenic headaches, left sacroiliac joint dysfunction and piriformis syndrome, depression, and lumbar radiculopathy. Dr. Burton diagnosed history of left sacroiliac joint dysfunction, piriformis tenderness, depression, and sleep apnea. Dr. Adson diagnosed post-traumatic stress disorder, recurrent major depressive disorder, panic disorder, opioid use disorder, and conversion disorder. No opinion was offered as to the cause of the diagnosed conditions by Dr. Adson, Dr. Burton, or Dr. Nixdorf. Medical evidence offering no opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[12] None of these physicians provided a rationalized opinion warranting expansion of appellant's claim. Therefore these reports are insufficient to establish appellant's claim.

Appellant failed to provide reasoned medical evidence demonstrating that her November 10, 2009 employment injury caused or aggravated her depression, anxiety, post-traumatic stress disorder, bilateral hip, and lower back. Accordingly, the Board finds that she has not met her burden of proof to establish expansion of the accepted conditions of her claim.

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 (a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish additional conditions including depression, anxiety, post-traumatic stress disorder, bilateral hip, and lower back conditions, causally related to her accepted November 10, 2009 employment injury.

[11] *See F.H., supra* note 10; *C.H.*, Docket No. 17-0266 (issued May 17, 2018).

[12] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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