

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

_____)	
B.P., Appellant)	
)	
and)	Docket No. 20-0820
)	Issued: July 12, 2022
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, Florence, CO, Employer)	
_____)	

Appearances:
Lonnie Boylan, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 3, 2020 appellant, through her representative, filed a timely appeal from a September 24, 2019 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 this case.

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.*

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of the claim to include additional conditions as causally related to her accepted July 31, 2017 employment injury.

FACTUAL HISTORY

On August 1, 2017 appellant, then a 37-year-old education specialist, filed a traumatic injury claim (Form CA-1) alleging that on July 31, 2017 she injured her groin and hip when she was running in response to an institutional emergency and slipped on uneven ground while in the performance of duty. She explained that she experienced pain and soreness in her left hip and interior left groin and that she could hear her hip clicking when she walked. Appellant noted that the incident “felt like a bolt of lightning went through her hip and it instantly felt weak.” She stopped work on August 1, 2017 and returned to work four hours a day on October 2, 2017.

In an August 2, 2017 development letter, OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In an August 25, 2017 response to OWCP’s development questionnaire, appellant explained that on July 31, 2017 she was running, when she caught her foot in the mud, and that “[her] leg tweaked slightly in an awkward position and [she] stumbled slightly.” She instantly felt a sharp pain in her left hip and weakness in her upper thigh and hip. Shortly thereafter appellant began to hear a clicking noise in her hip as she walked, and it felt as though her hip and pelvis bones were rubbing against each other. Her groin was also very sore. Appellant alleged that her upper back began to spasm due to her limp. She also asserted that she had to ice her lower back.

Appellant submitted additional evidence in support of her claim. On August 8, 2017 Dr. Cynthia A. Schafer, a Board-certified family practitioner, recounted appellant’s injury while running at work and diagnosed left hip sprain. She noted that she had a history of a left hip labral tear approximately one year earlier. Dr. Schafer listed appellant’s symptoms as arthralgias, back pain, gait problem, myalgias, neck pain, and neck stiffness. On physical examination, she had decreased range of motion (ROM) in her left hip, as well as decreased strength, and tenderness. Appellant further exhibited tenderness in her cervical, thoracic, lumbar back and was found to have a very antalgic gait. Dr. Schafer reviewed hip x-rays which were unremarkable.

On August 28, 2017 OWCP accepted the claim for left hip sprain.

OWCP subsequently received additional evidence, including an August 1, 2017 authorization for examination and/or treatment (Form CA-16).

A September 11, 2017 magnetic resonance imaging (MRI) scan demonstrated a contusion of the anterior greater trochanter at the insertion site of the gluteus minimus muscle, mild insertional tendinopathy changes of the gluteus minimus at the greater trochanter, and L5-S1 disc degenerative changes.

In September 11 and 25, 2017 notes, Dr. Schafer found tenderness in appellant's paraspinal and glutes in the lumbar back, but no bony tenderness, swelling or spasm. On September 25, 2017 she also diagnosed sacroiliitis in addition to left hip sprain. Dr. Schafer explained that appellant's method of injury was running when her left foot caught in mud, and she twisted her hip. She opined that there was 50 percent probability for causation.

In an October 10, 2017 note, Dr. Schafer found that appellant exhibited decreased ROM in the left hip and lumbar spine. She noted that appellant did not exhibit swelling or spasm. Dr. Schafer described the method of injury as appellant running when her left foot caught in mud, and she twisted her hip. She again opined that there was 50 percent probability for causation.

In an October 25, 2017 note, Dr. James P. Duffey, a Board-certified orthopedic surgeon, listed appellant's symptoms of low back pain radiating to both legs, left hip sprain, and sacroiliitis. He opined that her symptoms and physical findings were much more consistent with lumbar spine pathology than with intra-articular hip pathology. Dr. Duffey found that appellant's MRI scan suggested the presence of significant L5-S1 disc pathology. He recommended a lumbar MRI scan.

On November 7, 2017 appellant underwent a lumbar MRI scan, which demonstrated an annular bulge with a tear at L4-5 and L5-S1 broad-based protrusion with annular tear. Dr. Schafer examined her on November 9, 2017 and recommended an electromyogram (EMG). A December 13, 2017 EMG and nerve conduction velocity (NCV) study demonstrated mild irritation in the left low lumbar paraspinals. There was no specific myotomal acute or chronic irritation. The results noted that these findings could be supportive of left lumbar radiculopathy or lumbar spinal stenosis.

In a December 13, 2017 note, Dr. Gregory Ales, an osteopath, diagnosed left lumbar radiculitis and left leg numbness and pain.

On December 14, 2017 Dr. Roger Sung, a Board-certified orthopedic surgeon, examined appellant due to back and bilateral leg pain. He described her history of injury on July 31, 2017. Dr. Sung found tenderness in the lower back and buttocks as well as pain with ROM and loss of ROM. He reviewed appellant's MRI scan and reported low back pain, intervertebral disc disorders with lumbar radiculopathy, and lumbar disc degeneration. Dr. Sung noted that appellant sustained a work-related twisting injury on July 31, 2017 and diagnosed L4-5, L5-S1 annular tear with disc bulging, and back and bilateral leg pain.

On December 15, 2017 Dr. Schafer diagnosed left lumbar radiculitis, left hip sprain, and sacroiliac sprain. She reviewed appellant's lumbar MRI scan and noted an L4-5 bulge with an annular tear and an L5-S1 broad-based disc protrusion with annular tear and moderate left foraminal narrowing. Dr. Schafer described the method of injury as running when her left foot became caught in mud, and she twisted her hip. She opined that there was 50 percent probability for causation.

In the January 18, 2018 notes, Dr. Michael Sparr, a Board-certified physiatrist, noted appellant's history of a work injury on July 31, 2017. He diagnosed a substantial L5-S1 disc herniation and left L5 radiculopathy. Dr. Sparr found weakness as well as numbness and tingling

in the L5 dermatome, mild bilateral sacroiliitis, and moderate bilateral trochanteric bursitis. He prescribed a lumbar epidural steroid injection (ESI).

On January 25, 2018 Dr. Schafer diagnosed left lumbar radiculitis, left hip sprain, sacroiliac sprain and left L5-S1 herniated disc with annular tear. She recounted the history of injury and reiterated her opinion.

Appellant underwent ESI on February 16, 2018. Dr. Schafer examined her on February 20, 2018 and noted that she experienced little improvement from the ESI. She repeated her previous diagnoses and conclusions. Appellant underwent a second ESI on March 23, 2018.

On April 5, 2018 appellant underwent additional EMG/NCV studies, which were normal and demonstrated no evidence of lumbosacral radiculopathy, sciatic, or generalized peripheral neuropathy.

Dr. Sparr examined appellant on April 5 and 16, 2018 and reviewed her EMG/NCV studies. He found that these studies and her reaction to ESI argued against significant radiculopathy. Dr. Sparr noted that the diffuse nature of appellant's pain was not easily explained. She underwent a third ESI on May 4, 2018.

On May 17, 2018 Dr. Sparr noted that appellant underwent bilateral trochanteric bursa injections, which she found extremely beneficial. He diagnosed lumbago. Dr. Sparr found that she had ongoing diffuse lumbosacral and lower extremity pain with minimal objective findings. He determined that there was no evidence of radiculopathy based on electrodiagnostic studies and ESI. Dr. Sparr opined that appellant may have sacroiliitis and advised that she was nearing maximum medical improvement.

In May 15, June 12, and 26, 2018 notes, Dr. Schafer diagnosed sacroiliac sprain, left lumbar radiculitis, and intervertebral disc disorder with radiculopathy of the lumbosacral region. Appellant reported that she had to wear a 25-pound duty belt at work and suggested that this belt could be part of the prolongation of her symptoms. Dr. Schafer noted on June 12 and 26, 2018 that she suspected that the 25-pound duty belt was contributing to the persistence of her symptoms. On June 26, 2018 she noted that appellant was experiencing treatment delays as her lumbar conditions were the issue, not a hip sprain as originally believed and coded.

On June 1, 2018 appellant sought treatment from Dr. Nicholas Kurz, an osteopath. Dr. Kurz diagnosed left hip and lumbar muscle strain with exacerbation of preexisting degenerative disc disease. He opined that appellant could return to full-duty work.

In a letter dated July 11, 2018, appellant requested that OWCP expand acceptance of her claim to include additional conditions of left lumbar radiculitis, sacroiliac sprain, intervertebral disc disorder with lumbar radiculopathy, and degeneration of lumbar disc. She again described her July 31, 2017 employment incident and reviewed her medical history. Appellant asserted that Drs. Schafer and Duffy had opined that the initial diagnosis of hip sprain was premature and not complete.

Dr. Schafer completed a note on July 10, 2018 and opined that the November 7, 2017 MRI scan demonstrated disc herniations and that this scan confirmed that appellant's symptoms

originated in her back rather than her hip. She requested that OWCP expand the acceptance of her claim to include lumbar sprain with herniated disc causally related to the July 31, 2017 employment injury.

In July 10 and August 14, 2018 treatment notes, Dr. Schafer diagnosed sacroiliac sprain, subsequent encounter, degeneration of lumbosacral intervertebral disc, and left lumbar radiculitis. She noted that appellant did not have any leg radiation until October 10, 2017. Dr. Schafer opined that her radiculitis was not related to the original injury, but began three months later.

On February 15, 2019 the employing establishment informed OWCP that appellant had undergone back surgery.

On February 25, 2019 OWCP referred appellant, a statement of accepted facts (SOAF), and a series of questions to Dr. John Douthit, an osteopath and Board-certified family practitioner, for a second opinion evaluation.

In his March 20, 2019 report, Dr. Douthit described appellant's July 31, 2017 employment incident of running, catching her foot and twisting. He reviewed appellant's medical history and found that Dr. Sung had performed a lumbosacral fusion from L4 through S1 on October 9, 2018.³ Dr. Douthit reviewed treatment notes dated August 8, 23, and September 27, 2018 from Dr. Sung, which reported bilateral leg pain and diagnosed degenerative disc disease L4-5 and L5-S1 with retrolisthesis and chronic pain with extremity radiculopathy. He examined appellant's MRI scan and found bulging discs at L4-5 and L5-S1, but no herniation or nerve root compression. Dr. Douthit noted that she reported foot drop and severe weakness of the leg, but that these symptoms were not included in the medical record. In response to OWCP's questions, Dr. Douthit reported that it was unclear what was appellant's actual injury and the source of her pain. He found that the medical evidence did not support Dr. Sung's diagnoses of degenerative disease of the lumbar spine. Dr. Douthit opined that appellant's spine surgery was not causally related to the July 31, 2017 employment injury and advised that she could return to work without restrictions.

In an April 17, 2019 development letter, OWCP requested that appellant submit additional medical evidence supporting that the alleged back conditions were causally related to her July 31, 2017 employment injury. It afforded her 30 days to respond.

Appellant's representative responded on May 15, 2019 and asserted that the SOAF was vague. He specifically objected to the statements that while running she slightly slipped and tweaked her groin and hip. Appellant's representative further asserted that there was an unresolved conflict of medical opinion between Drs. Sung and Douthit regarding whether appellant's diagnosed back conditions were related to the July 31, 2017 employment incident.

By decision dated June 5, 2019, OWCP denied appellant's request to expand the acceptance of her claim to include diagnosed back conditions. It noted that she had not submitted medical evidence in support of her additional claimed conditions.

³ The Board notes that Dr. Douthit referenced reports from Dr. Sung that are not present in the record before the Board.

On July 1, 2019 appellant, through her representative, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. He resubmitted Dr. Schafer's May 15, 2018 treatment note. Appellant's representative also provided a July 8, 2019 brief in which he again alleged that the SOAF was vague and that there was a conflict of medical opinion between Drs. Sung and Douthit.

By decision dated September 24, 2019, OWCP's hearing representative affirmed OWCP's June 5, 2019 decision, noting that Dr. Douthit's opinion was entitled to the weight of the medical opinion evidence.

LEGAL PRECEDENT

When 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.⁴

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁵ A physician's opinion on whether there is causal relationship between the diagnosed condition and an accepted injury must be based on a complete factual and medical background.⁶ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, which, explains the nature of the relationship between the diagnosed condition and the accepted employment injury.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to the accepted July 31, 2017 employment injury.

In his March 20, 2019 report, Dr. Douthit described her July 31, 2017 employment incident of running, catching her foot and twisting. He reviewed her medical history and noted that while she was alleging foot drop and severe weakness of the leg, these symptoms were not previously included in the medical record. Further, Dr. Douthit did not find medical evidence to support Dr. Sung's diagnoses of degenerative disease of the lumbar spine noting that a review of her MRI scan demonstrated only bulging discs at L4-5 and L5-S1. He opined that appellant's spine surgery was not causally related to the July 31, 2017 employment injury and that she could return to work with no restrictions. The Board finds that Dr. Douthit's report has reliability, probative value, and convincing quality with respect to its conclusions regarding appellant's claim for additional back

⁴ A.A., Docket No. 19-1165 (issued December 16, 2019); M.B., Docket No. 19-0485 (issued August 22, 2019); R.J., Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ E.M., Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁶ M.V., Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *Id.*

conditions related to her July 31, 2017 employment injury. Dr. Douthit provided a thorough factual and medical history and accurately summarized the relevant medical evidence with medical rationale for his opinion that appellant had no objective findings of an employment-related back condition. As Dr. Douthit's report is sufficiently rationalized and based on an accurate factual history, his opinion constitutes the weight of the medical evidence.⁸

Appellant submitted July 10 and August 14, 2018 treatment notes, wherein Dr. Schafer diagnosed sacroiliac sprain, subsequent encounter, degeneration of lumbosacral intervertebral disc, and left lumbar radiculitis. She noted that appellant did not have any leg radiation until October 10, 2017. Dr. Schafer opined that her radiculitis was not related to the original injury, but began three months later. These notes negate causal relationship between appellant's back conditions and her accepted employment injury. The Board has held that medical evidence that negates causal relationship is of no probative value.⁹ As such, this evidence is insufficient to establish expansion of the claim

On May 17, 2018 Dr. Sparr diagnosed lumbago. He found that appellant had ongoing diffuse lumbosacral and lower extremity pain with minimal objective findings. Dr. Sparr determined that there was no evidence of radiculopathy based on electrodiagnostic studies and ESI. He also noted that appellant may have sacroiliitis. However, Dr. Sparr did not provide an opinion regarding his most recent diagnoses and appellant's July 31, 2017 employment injury. The Board has held that a medical report is of no probative value on the issue causal relationship if it does not offer an opinion as to whether the accepted employment incident caused or aggravated the claimed condition.¹⁰ As such, this report is insufficient to establish expansion of the claim.

Similarly, on December 14, 2017 Dr. Sung recounted that appellant sustained a work-related twisting injury on July 31, 2017 and diagnosed L4-5, L5-S1 annular tear with disc bulging and back and bilateral leg pain. However, he merely repeated the history of injury as reported by appellant without providing his own opinion regarding whether his diagnosed conditions were work related. As noted, the Board has held that a medical report lacking an opinion on causal relationship is of no probative value.¹¹ As such, this report is also insufficient to establish the claim.

As the medical evidence of record is insufficient to establish that the diagnosed back conditions are causally related to the accepted July 31, 2017 employment injury, the Board finds that appellant has not met her burden of proof to establish expansion of the 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.

⁸ *S.B.*, Docket No. 20-0643 (issued January 27, 2021); *R.J.*, Docket No. 17-1365 (issued May 8, 2019).

⁹ *T.W.*, Docket No. 19-0677 (issued August 16, 2019).

¹⁰ *E.T.*, Docket No. 19-0948 (issued July 27, 2020); *A.R.*, Docket No. 19-1560 (issued March 2, 2020).

¹¹ *Id.*

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand the acceptance of the claim to include additional conditions as causally related to her accepted July 31, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2022
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board