

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EUDITH A. HENDRIX and DEPARTMENT OF DEFENSE,
DEFENSE LOGISTICS AGENCY, Stockton, CA

*Docket No. 99-1572; Submitted on the Record;
Issued April 17, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained avascular necrosis of both hips causally related to an August 20, 1993 employment incident.

On May 14, 1997 appellant, then a 50-year-old supply management officer, filed a claim for a traumatic injury occurring on August 20, 1993 in the performance of duty. He described his injury as occurring when he went to pick up his luggage from an airport carousel. Appellant related:

“As I was retrieving my bag from the carousel, I did not notice that another passenger had placed his briefcase on the floor directly behind me. I tripped and fell onto the concrete floor and landed on both buttocks. My bag was on top of me as I had lifted it up from the luggage carousel. I am an amputee on the right leg approximately [five] inches below the knee. This causes me some instability and prevented me from being able to protect myself in the fall. Both of my hips were severely jarred as a result of striking the concrete floor. In addition, both of my buttocks were bruised and were sore for an extended period. I reported the incident the following Monday to my Commanding Officer, Colonel Jim LaBounty. The note I wrote to him is attached.”

Appellant related that he did not seek medical treatment because he thought that the soreness would subside. He stated, “After a long period of time I noticed my right hip continuing to worsen. The pain was noticeable during the latter part of 1993 and 1994.” Appellant related that he had a total hip replacement on the right in December 1995 and on the left in January 1997. He further related that traveling in cramped airplanes and extensive walking during the course of his federal employment caused his hip condition to deteriorate.

On August 15, 1997 appellant filed a notice of recurrence of disability due to his August 20, 1993 employment injury. In response to questions from the Office of Workers’

Compensation Programs, he related that he did not seek medical attention following his August 20, 1993 injury until February 15, 1995 because he believed that the pain would cease.

In support of his claim, appellant submitted reports from Dr. Robert E. Caton, an orthopedic surgeon and his attending physician. By letter dated October 21, 1997, the Office referred appellant to Dr. Charles R. Miller, a Board-certified orthopedic surgeon, for a second opinion evaluation.

On December 17, 1997 the Office doubled appellant's claim for an injury on August 20, 1993, assigned file number A13-1134402, with his claim for a traumatic injury on July 16, 1997, assigned file number A25-0509025 and accepted for right hip strain and back strain.¹

By decision dated January 9, 1998, the Office denied appellant's claim for avascular necrosis of both hips caused by "an accident sustained in the performance of duty on Aug[ust] 20, 1993." In the accompanying memorandum, the Office determined that he filed a timely claim for an injury occurring on August 20, 1993 when he fell backwards while retrieving luggage from an airport carousel. The Office noted that appellant first sought treatment in February 1995, at which time he informed his physician that he had a "new" problem. The Office further noted that appellant had not worked since sustaining an employment injury on July 16, 1997, assigned file number A25-0509025. The Office indicated that Dr. Miller, the second opinion examiner, did not have knowledge of appellant's July 16, 1997 employment injury and relied in part on medical reports that had not been submitted to the Office.² The Office concluded that Dr. Miller's opinion represented the weight of the medical evidence and established that appellant's bilateral avascular necrosis of the hips was not caused by factors of his federal employment.

On April 10, 1998 appellant requested reconsideration of his claim. By decision dated December 8, 1998, the Office denied modification of its January 9, 1998 decision.³

The Board finds that the case is not in posture for decision due to a conflict in medical evidence.

¹ The Board notes that the case file contains an Office decision in File Number A25-0509025 dated March 23, 1999 terminating appellant's entitlement to compensation on the grounds that he had no further condition or disability causally related to his July 16, 1997 employment injury. He requested a hearing before an Office hearing representative regarding the termination decision in a letter dated March 27, 1999. As appellant has not appealed the Office's March 23, 1999 decision it is not before the Board at the present time.

² The claims examiner stated, "Because of this circumstance, my decision will only address the issue of whether the bilateral avascular necrosis was proximately caused by factors of his employment before May 17, 1997, the date that he filed his first claim. This particular decision will not make any findings of fact with respect to case 25-0509025."

³ The Office initially issued its decision on November 20, 1998 but subsequently reissued the decision on December 8, 1998 with appeal rights.

In support of his claim, appellant submitted a report dated May 15, 1997 from Dr. Caton. He related:

“It should be noted that after review of his medical records, it is indeed felt that [appellant’s] present problems are a result of an injury that initially occurred approximately four years ago, on August 20, 1993. At that time, after review of the medical records and after talking to [him], it was noted that he sustained significant blunt trauma to both the right and left hips which he reported at the time. [Appellant] has stated to me on multiple occasions that ever since the original trauma, he has noticed a significant downhill course as regards to his hip joints.”

Dr. Caton discussed appellant’s hip replacements and stated:

“It should be noted that significant trauma to the hip joints have indeed shown to be a cause of avascular necrosis which [appellant] ultimately was diagnosed with. The diagnosis was made on an (MRI) [magnetic resonance imaging scan] that [appellant] had and this diagnosis is compatible with significant trauma.”

In a report dated January 29, 1998, Dr. Caton related that appellant sustained a traumatic fall at an airport on August 20, 1993 which he believed caused the avascular necrosis. He noted that an MRI scan showed “a fracture involving the head of the femur....” Dr. Canton opined:

“It is felt that his fall with the trauma that he sustained on that day, which resulted in a fracture of the head of the femur, is indeed the underlying etiology of his avascular necrosis. [Appellant] has no other reason for avascular necrosis of his femoral head and it appears that the trauma which was sustained and which was seen on a later MRI scan, is indeed the underlying cause for his problem.

“Due to the fact that [appellant] had avascular necrosis of his femoral head with eventual collapse, he ultimately ended up requiring a total hip replacement and again the total hip replacement is secondary to the original fall on August 20, 1993.

“It should be noted that it is well known in the orthopedic literature, that trauma can cause loss of adequate blood supply to the femoral head, therefore resulting in avascular necrosis with deterioration and collapse of the head of the femur.”

Dr. Caton noted that appellant did not have hip problems prior to his fall and that “[h]is other joints are in good condition and it appears that the fall therefore is the cause [of] his present condition for which he underwent his surgical procedures.”

In a report dated December 10, 1997, Dr. Miller, an Office referral physician, discussed appellant's history of injury, reviewed the medical evidence and listed findings on examination. He noted that appellant "was involved in an alcohol awareness program in 1994." Dr. Miller related:

"[Appellant] has avascular necrosis, for which he underwent total hip replacements. In my opinion, the avascular necrosis was as a result of systemic illness and not due to the contusion to the buttocks in 1993. There may be a causal relationship between the alcohol use and the avascular necrosis in both hips.

"Avascular necrosis is a condition of the hips, in which the circulation to the head of the femur is cut off by severe trauma, such as fracture or dislocation of the hips, which [appellant] has not had, although there may have been trauma to both hips at the time of the motor vehicle accident while working for the California Highway Patrol, with subsequent amputation of his right leg below the knee.

"It should be noted that the alleged trauma to the hips was actually a bruising of the buttocks and ischial tuberosities and not the hip joints. The bruising and contusion of the buttocks is not known to cause avascular necrosis of the hip.

"[Appellant] does have a history of alcohol problems, which is a very common cause of avascular necrosis in the hips in males in this age group.

"It is my opinion that the injury, as described by [appellant] and on medical record review, is not the type that would be expected to cause avascular necrosis of both hips."

Dr. Miller found that appellant was totally disabled from work but that it was not employment related.

The Board finds that there is a conflict in the medical evidence between Dr. Caton, an orthopedic surgeon and appellant's attending physician and Dr. Miller, a Board-certified orthopedic surgeon who provided a second opinion evaluation. Section 8123(a) of the Federal Employees' Compensation Act,⁴ provides in pertinent part: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination."⁵

Consequently, the case must be remanded so that the Office may refer appellant, together with the case record and a statement of accepted facts, to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant's bilateral avascular necrosis of the hips was caused or aggravated by the August 20, 1993 employment incident and, if so, whether surgery was required due to the employment injury. The Office

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 5 U.S.C. § 8123(a).

should obtain all relevant medical records prior to referral of appellant to the impartial medical specialist. After such development as it deems necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated December 8, 1998 is set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
April 17, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member