

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

ROBERT J. IRWIN, Appellant

and

**U.S. POSTAL SERVICE, SOUTHWARK POST
OFFICE, Philadelphia, PA, Employer**

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**Docket No. 04-2287
Issued: February 23, 2005**

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 20, 2004 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated June 22, 2004, denying his claim for degenerative joint disease of the left hip, and a September 9, 2004 decision denying his July 30, 2004 request for an oral hearing on the grounds that it was untimely filed. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the issues in this case.

ISSUES

The issues on appeal are: (1) whether appellant established that he sustained degenerative joint disease of the left hip in the performance of duty; and (2) whether the Office properly denied appellant's request for an oral hearing on the grounds that it was untimely filed.

FACTUAL HISTORY

On May 30, 2004 appellant, then a 39-year-old letter carrier, filed an occupational disease claim alleging that he sustained degenerative arthritis of the left hip in the performance of duty on or before March 24, 2004. He attributed his condition to the cumulative "wear and tear" of

carrying a mail satchel for 6 hours a day, 5 days a week for 15 years while walking outdoors in inclement weather and climbing stairs. Appellant did not stop work. The employing establishment noted that he had not been off work “except for the duties he need[ed] a cart for.”

In a March 28, 2004 report, Dr. Joseph A. Libby, an attending Board-certified internist, stated that appellant had severe degenerative joint disease of the hip and needed to use a cart for the delivery of mail.”¹

Dr. Joseph N. Ranieri, an attending osteopath Board-certified in family practice, submitted treatment notes from March 24 to May 3, 2004, noting appellant’s severe left hip pain and that he had been refused a cart to deliver mail and was still carrying a satchel. In an April 23, 2004 slip, Dr. Ranieri stated that he should carry “no mail on his back” and “no carrier satchel on his back.” He asserted in a May 3, 2004 note that in his “professional medical opinion [appellant’s] left hip arthritis [was] causally related to and clearly aggravated by his job.”

In a May 6, 2004 report, Dr. Libby noted treating appellant since early 2004 for left hip pain, originally attributed to Lyme disease. However, antibiotic treatment for Lyme disease did not alleviate his symptoms. By March 24, 2004, appellant’s pain was “so severe that he was often unable to work” as his pain worsened while walking and when carrying a load. Dr. Libby noted that he required a left hip replacement. He restricted appellant from carrying a mail satchel, noting that he had requested a cart but that none was provided. Dr. Libby diagnosed “severe advanced degenerative arthritis of his left hip that [was] causally related and clearly exaggerated by his work activities.”

In a May 10, 2004 letter, the employing establishment asserted that appellant was not issued a cart when he requested one in April 2004, as there was none available. It was noted that he had “not carried mail on his back since notifying [the employing establishment] of his condition” in April 2004 and that another carrier completed his street work.

In a May 18, 2004 letter, the Office advised appellant of the type of additional evidence needed to establish his claim, including a report from his attending physician explaining how and why specific work factors would cause the claimed left hip condition.

In response, appellant submitted a letter and forms received by the Office on June 8, 2004 attributing his claimed left hip condition to climbing stairs, walking on uneven surfaces, walking outdoors in inclement weather and carrying a mail satchel during his 15 years as a letter carrier. He noted that the onset of left hip symptoms in early 2004 was obscured by Lyme disease and that his doctor initially diagnosed bursitis. Appellant listed nonoccupational activities of hunting, fishing, coaching and refereeing youth athletic events. He submitted an April 2, 2004 note from Dr. Ranieri stating that he needed a “cart for mail, severe hip degenerative joint disease.”

¹ A March 18, 2004 magnetic resonance imaging (MRI) scan showed degenerative joint disease of the left hip with subchondral cystic changes and minimal effusion.

By decision dated June 22, 2004, the Office denied appellant's claim on the grounds that the medical evidence submitted was insufficient to establish a causal relationship between work factors and the claimed left hip condition.

In a letter postmarked July 30, 2004, appellant requested an oral hearing before a representative of the Office's Branch of Hearings and Review.

By decision dated September 9, 2004, the Office denied appellant's request for an oral hearing on the grounds that it was untimely filed. The Office found that his request for an oral hearing was postmarked on July 30, 2004, more than 30 days after issuance of the June 22, 2004 decision. The Office also denied appellant's request for an oral hearing on the grounds that the issues involved could be addressed equally well through the submission of new, relevant evidence accompanying a valid request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medial 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.⁵ The mere fact that a condition manifests itself during a period of

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

employment or the claimant's belief that the condition was caused or aggravated by employment factors is insufficient to establish a causal relationship.⁶

ANALYSIS -- ISSUE 1

Appellant alleged that he developed degenerative joint disease of the left hip as a result of walking, climbing steps, working outside in inclement weather and carrying a mail satchel over a 15-year period. The Office denied appellant's claim for compensation on the grounds that the medical evidence was not sufficient to establish that the diagnosed condition was causally related to her employment.

In support of his claim, appellant submitted March 28 and May 6, 2004 reports from Dr. Libby, who diagnosed severe degenerative joint disease of the left hip requiring complete arthroplasty." He directed that appellant use a cart to deliver mail. Regarding causal relationship, Dr. Libby opined that appellant had severe advanced degenerative arthritis of his left hip that was causally related and exaggerated by his work activities. However, Dr. Libby did not explain how or why the factors of appellant's employment, such as walking or carrying a mail satchel, would cause or aggravate the diagnosed left hip arthritis. The probative value of his opinion is diminished by this lack of rationale.⁷

Appellant also submitted March 24 and May 3, 2004 reports from Dr. Ranieri, who diagnosed severe degenerative joint disease of the left hip. He restricted appellant from carrying a mail satchel and directed that he use a cart to deliver mail. Dr. Ranieri opined that appellant's "left hip arthritis [was] causally related to and clearly aggravated by his job." However, Dr. Ranieri did not explain the basis for his conclusion. He did address how carrying a mail satchel or other employment duties would cause or aggravate the diagnosed degenerative joint disease of the left hip. Thus, his opinion is of limited probative value as it is not supported by medical rationale.⁸

The Board notes that the Office advised appellant by May 18, 2004 letter, of the necessity of providing a report from his attending physician explaining how and why specific work factors would cause the claimed left hip condition. However, he did not submit sufficient rationalized medical evidence to establish a causal relationship between factors of his federal employment and the diagnosed left hip condition. Thus, he did not meet his burden of proof to establish causal relationship in this case.⁹

⁶ *Charles E. Evans*, 48 ECAB 692 (1997).

⁷ *Charles W. Downey*, 54 ECAB __ (Docket No. 02-218, issued February 24, 2003) (medical opinion not fortified by medical rationale is of little probative value).

⁸ *Id.*

⁹ *Solomon Polen*, *supra* note 5.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that “a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.”¹⁰ Sections 10.617 and 10.618 of the federal regulation implementing this section of the Act provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.¹¹ Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, the Office may within its discretionary powers grant or deny appellant’s request and must exercise its discretion.¹²

ANALYSIS -- ISSUE 2

Following the Office’s June 22, 2004 denial of his occupational disease claim, appellant requested a review of the written record in a letter postmarked July 30, 2004. Section 10.616 of the federal regulation provides that a request for a review of the written record or an oral hearing “must be sent within 30 days (as determined by postmark or other carrier’s date marking) of the date of the decision for which a hearing is sought.”¹³ Appellant’s letter was postmarked more than 30 days after issuance of the June 22, 2004 decision.

As appellant did not request a hearing within 30 days of the June 22, 2004 decision, he is not entitled to a hearing as a matter of right. The Office must then exercise its discretion to determine whether his request for an oral hearing should be granted. In its September 9, 2004 decision, the Office considered the issue involved and found that appellant could pursue it equally well through submitting new, relevant evidence on reconsideration. The Board finds that the Office properly exercised its discretion in denying appellant’s request for an oral hearing.

CONCLUSION

The Board finds that the Office properly denied appellant’s claim for degenerative joint disease of the left hip as he submitted insufficient medical evidence to establish a causal relationship between factors of his federal employment and the claimed condition. The Board further finds that the Office properly denied his request for an oral hearing on the grounds that it was untimely filed.

¹⁰ 5 U.S.C. § 8124(b)(1).

¹¹ 20 C.F.R. §§ 10.616, 10.617.

¹² *Delmont L. Thompson*, 51 ECAB 155 (1999); *Eddie Franklin*, 51 ECAB 223 (1999); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

¹³ 20 C.F.R. § 10.616(a).

ORDER

IT IS HEREBY ORDERED THAT the September 9 and June 22, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 23, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member