

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

W.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lansing, MI, Employer**

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**Docket No. 10-941
Issued: January 11, 2011**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 24, 2010 appellant filed a timely appeal from the September 17, 2009 and February 2, 2010 merit decisions of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained injury to both hips causally related to factors of his employment.

FACTUAL HISTORY

On September 2, 2008 appellant, then a 67-year-old mail clerk, filed two occupational disease claims (Form CA-2) which were administratively combined. He alleged that he developed aggravation of the right hip and underwent a hip replacement as a result of awkward lifting, torso twisting to sort mail, and prolonged walking and standing on concrete. Appellant first became aware of his condition on March 19, 2003 and of its relationship to his employment on June 19, 2008. He also alleged that his left hip had early symptoms of failure similar to the

right hip, due to prolonged walking, standing, pulling equipment on concrete and twisting of the torso in an awkward manner while sorting mail. Appellant first became aware of his left hip condition in 2006 and of its relationship to his employment on June 17, 2008.¹

Appellant submitted a June 19, 2008 report from Dr. John W. Ellis, Board-certified in family medicine, who reviewed appellant's medical history and provided findings on physical examination. He underwent total right hip replacement in 2003 but had continued pain on his right hip and developed pain in the left side. Dr. Ellis indicated that appellant first developed right hip pain in 2002 with pain worsening after prolonged standing. On examination there was decreased range of motion in both the right and left hip with some crepitation in the left hip. Dr. Ellis diagnosed arthritis to both hips as a result of prolonged standing when working for the U.S. Postal Service. He explained that prolonged standing put increased stress on the cartilage and blood vessels, causing traumatic degenerative arthritis in both hips requiring the right total hip replacement in 2003. Dr. Ellis recommended continued treatment and medication with the possibility for future surgery.

By letter dated September 8, 2008, the employing establishment controverted appellant's claim on the grounds that there was no medical evidence to support that his injuries were caused by his work activities.

In a letter dated July 8, 2009, the Office requested additional medical evidence, including copies of examination and treatment records for both hips dating back to when care was first provided.

In a June 25, 2003 report, Dr. J. Wesley Mesko, a Board-certified orthopedic surgeon, found appellant to have some limitation of range of motion, particularly with abduction and internal rotation. He noted that for eight years appellant had complaints of intermittent pain in his gluteal cheek and groin area, becoming more disabling in April 2003 due to ground tilling for planting flowers. Dr. Mesko evaluated appellant's previous May 2003 x-ray films and documented stage IV degenerative arthritis with bone-on-bone contact. He also noted a large medial and inferior osteophyte on the right hip and cystic change in the superolateral acetabulum of the left hip. Dr. Mesko diagnosed degenerative arthritis of the right hip which had become refractory to medical management and treatment, recommending total hip arthroplasty. In a July 10, 2003 certification form, he indicated that appellant was to have right total hip replacement on August 28, 2003.

In a factual statement, appellant contended that his duties as a mail clerk had a causal effect on his right hip replacement in 2003. He noted that he worked the dock area for a considerable length of time which involved manipulating heavy equipment both on and off trucks and trailers, as well as twisting, turning, pushing and pulling equipment which affected his limbs.

¹ Appellant began working for the United States Postal Service as a mail clerk in 1977. He stopped work on August 3, 1987 due to occupational injuries until a return to restricted duties as an air processor on September 16, 1996. Appellant's new duties included sorting express and overnight mail, processing mail, and occasionally lifting up to 25 pounds. He stopped work on January 24, 2006 due to a shoulder injury and returned to restricted duties on May 13, 2006.

By decision dated September 17, 2009, the Office denied appellant's claim finding that the medical evidence did not establish that his hip conditions were related to the accepted work activities.

On January 21, 2009 appellant, through his representative, requested reconsideration. The Office received additional treatment and diagnostic reports dated May 7, 2003 to February 15, 2004. In an August 5, 2003 preoperative health assessment, Aruna Kundi, M.D. found appellant had severe degenerative joint disease with severe right hip pain and noted he was scheduled for a right total hip replacement on August 28, 2003.

Appellant also submitted reports from Dr. Mesko dated August 31, 2003 to February 15, 2004. In an August 31, 2003 discharge summary, Dr. Mesko stated that, despite conservative medical management and activity modification, appellant underwent right total hip arthroplasty on August 28, 2003 due to disabling pain in his right hip. In an October 15, 2003 x-ray report, he noted a right total hip arthroplasty present, acceptably positioned with no progressive radiolucencies, component migration or osteolysis evident. Dr. Mesko's February 25, 2004 postsurgical follow up indicated that the wound was well healed, muscle tone was normal, and motor flexors and abductors were 5 out of 5 for both hips.

In a January 20, 2010 factual statement, appellant stated that his right hip gradually lost function, in all probability, due to prolonged standing and repeated awkward body movements from congested work areas while maneuvering heavy loaded equipment. He further stated that he had not sought invasive treatment for his left hip and was utilizing exercise and medication for the pain.

By decision dated February 2, 2010, the Office denied modification of its September 17, 2009 decision on the grounds that the medical evidence of record failed to establish the causal relationship between appellant's hip conditions and the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in

² Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

³ Michael E. Smith, 50 ECAB 313 (1999).

conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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) a 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 employee.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence.⁶ 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 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. This medical opinion must include an accurate history of the employee's employment injury, and must explain how the condition is related to the injury. 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.⁷

ANALYSIS

The Office accepted that appellant engaged in lifting packages, standing, walking and sorting mail in his employment activities as a mail clerk. It denied his claim on the grounds that the evidence failed to establish a causal relationship between those activities and his claimed hip conditions. The Board finds that the medical evidence of record is insufficient to establish that appellant sustained right and left hip injuries causally related to factors of his employment as a mail clerk.

Appellant was initially evaluated by Dr. Mesko on June 25, 2003. Dr. Mesko diagnosed degenerative arthritis of the right hip and noted a large medial and inferior osteophyte on the right hip and cystic change in the superolateral acetabulum of the left hip. He further indicated that appellant's pain in his gluteal cheek and groin area had become more disabling since April 2003

⁴ *Elaine Pendleton, supra* note 2.

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *D.U.*, 61 ECAB ____ (Docket No. 10-144, issued July 27, 2010).

⁷ *James Mack*, 43 ECAB 321 (1991).

due to gardening. The remaining reports of Dr. Mesko establish that appellant underwent total right hip replacement in 2003 as a result of degenerative arthritis. His February 25, 2004 postsurgical follow up indicated that appellant's wound was well healed, muscle tone was normal, and motor flexors and abductors were 5 out of 5 for both hips.

Dr. Mesko did not offer a rationalized opinion on the causal relationship between appellant's diagnosed condition and the factors of employment in this claim.⁸ Moreover, his report indicated that appellant's most immediate hip complaints in June 2003 were related to gardening and planting flowers, not his job at the post office. Although Dr. Mesko provided a diagnosis of degenerative arthritis, none of his reports mentioned a work-related cause or aggravation of appellant's hip conditions. Medical reports not containing adequate rationale on causal relationship are of diminished probative value on that issue and are insufficient to meet an employee's burden of proof.⁹ Therefore, Dr. Mesko's medical reports are insufficient to meet appellant's burden of proof.

In an August 5, 2003 preoperative health assessment, Dr. Kundi diagnosed severe degenerative joint disease with right hip pain. While she diagnosed a hip condition, she did not identify the cause of the problem and did not mention appellant's employment activities. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰ Without medical reasoning explaining how appellant's employment factors caused the hip condition, Dr. Kundi's report is insufficient to meet appellant's burden of proof.¹¹

In his June 19, 2008 report, Dr. Ellis stated that appellant had a total right hip replacement in 2003 but continued to have pain in his right hip and developed pain in his left. Based on his review of appellant's medical records and physical examination, he diagnosed arthritis in both hips, noting appellant showed decreased range of motion in both the right and left hip with some crepitation in the left hip. Dr. Ellis determined that the hip conditions were caused by prolonged standing which put increased stress on the cartilage and blood vessels.

Dr. Ellis had no contact with appellant prior to his June 19, 2008 evaluation. He reviewed a number of appellant's medical records but failed to identify appellant's work duties, especially how long he worked for the post office, how many hours he stood in a day, the periods and the frequency of other physical movements and tasks, and the amount of time he took off. Dr. Ellis did not explain how appellant's job duties could have caused the hip injury other than offering a generalized opinion that standing while working placed a stress on the cartilage and blood vessels of the hips. Though he opined that appellant's work situation was the factor that

⁸ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹⁰ *C.B.*, 61 ECAB ____ (Docket No. 09-2027, issued May 12, 2010); *S.E.*, 60 ECAB ____ (Docket No. 08-2214, issued May 6, 2009).

¹¹ *C.B.*, 60 ECAB ____ (Docket No. 08-1583, issued December 9, 2008).

led to the development of his hip arthritis, he did not provide a well-rationalized opinion on the causal relationship.

The report of Dr. Ellis covered a number of appellant's medical conditions and affected body parts.¹² While briefly noting a history of appellant's hip injuries, Dr. Ellis did not discuss appellant's years of prior treatment for his hips. The report contained no medical records specific to appellant's hips. Moreover, Dr. Ellis did not address the reports of Dr. Mesko or Dr. Kundi and did not cite medical records that were roughly contemporaneous with appellant's hip surgery in 2003. It is not clear that he had a full or accurate history of medical treatment.

Dr. Ellis failed to mention or consider facts identified by Dr. Mesko, such as the existence of an osteophyte on the right hip and the significant worsening of appellant's hips following work in the garden. He did not consider alternative causes for appellant's hip problems such as gardening or the natural progression of arthritis. Dr. Ellis did not review the reports and test results of physicians who had previously treated appellant for his hip conditions. Lacking a complete and accurate factual background, sufficient medical record review and rationale, his report is insufficient to establish that appellant's hip conditions were causally related to his employment as a mail clerk.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹³ An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.¹⁴ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office properly denied his claim for compensation.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his right and left hip injuries are causally related to factors of his employment as a mail clerk.

¹² In his June 19, 2008 report, Dr. Ellis also evaluated appellant's shoulders, elbows, wrists, hands, knees, ankles, toes, feet and neck.

¹³ *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁴ *D.D.*, 57 ECAB 734 (2006).

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2010 and September 17, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 11, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board