

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

J.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lawrence, MA, Employer**

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**Docket No. 15-0619
Issued: July 17, 2015**

Appearances:

*Daniel B. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 26, 2015 appellant, through counsel, filed a timely appeal from a January 8, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 has met his burden of proof to establish an aggravation or acceleration of bilateral hip osteoarthritis causally related to his employment.

FACTUAL HISTORY

On March 20, 2012 appellant, then a 46-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a permanent acceleration of bilateral hip

¹ 5 U.S.C. §§ 8101-8193.

osteoarthritis in the performance of duty on or before January 12, 2012.² He attributed his condition to prolonged standing, walking, heavy lifting, lifting in awkward positions, carrying a mail satchel weighing 35 pounds, and climbing steps while working as a letter carrier from January 1, 1988 through 2009.³ Appellant noted that, under File No. xxxxxx161, OWCP accepted a muscle pull in his right thigh sustained on January 5, 2006 when he slipped and fell on ice, striking the upper portion of his right leg. June 10, 2006 imaging studies to evaluate postinjury hip pain revealed degenerative arthritis of both hips.⁴

Appellant submitted medical evidence in support of his claim. On October 20, 2008 Dr. Richard Choi, an attending Board-certified orthopedic surgeon, noted severely limited right hip motion. X-rays of the right hip showed significant degeneration, with a one- to two-millimeter joint space remaining.⁵

In a July 23, 2009 report, Dr. Ronald A. Marvin, an attending Board-certified orthopedic surgeon, noted worsening osteoarthritis of both hips, more severe on the right. He noted that appellant's father also had early degenerative arthritis, indicating that appellant's condition was "probably congenital." Dr. Marvin recommended hip resurfacing.

Dr. Daniel M. Ward, an attending Board-certified orthopedic surgeon, provided a September 15, 2009 report noting that x-rays showed the "fairly impressive" advancement of right hip osteoarthritis from February to August 2009. He performed a total right hip arthroplasty on January 11, 2010 and total left hip arthroplasty on January 20, 2010.⁶

In a January 12, 2012 report, Dr. David C. Morley, Jr., an attending Board-certified orthopedic surgeon, described appellant's job duties, noted the January 5, 2006 injury, and reviewed medical records. He stated that appellant had "[n]o significant family illness." Dr. Morley related appellant's complaints of bilateral hip stiffness, swelling in both legs, chronic bone pain in both thighs, and difficulties with activities of daily living. On examination, he observed a nontender right hip with arthroplasty scar, tenderness to palpation over the left hip incision, and restricted motion of both hips in all planes.⁷ Dr. Morley opined that "repetitive heavy physical activities" at work caused increased stresses on appellant's hips, contributing" to preexisting degenerative joint disease and failure of articular cartilage. He explained that as

² In a March 26, 2012 letter, the employing establishment asserted that the date of injury should be June 2006, when imaging studies should have made appellant aware of the possible relationship between work factors and osteoarthritis.

³ Appellant submitted a letter carrier position description, listing requirements of walking and climbing steps six or more hours a day, and lifting up to 70 pounds intermittently.

⁴ June 10, 2006 x-rays showed degenerative osteoarthritis of both hips, worse on the right.

⁵ August 21, 2008 x-rays showed advanced osteoarthritic changes in the right hip, with relatively advanced arthritis of the left hip.

⁶ In a July 21, 2010 report, Dr. Christine Dalrymple, an attending podiatrist, noted appellant's history of bilateral hip replacements.

⁷ Dr. Morley noted that he obtained all range of motion measurements after appellant performed warm-up exercises. "All range of motion measurements were made three times with a goniometer with the highest measurement" recorded.

there was “no history of traumatic incident involving his hips,” the “most likely cause of [appellant’s] condition was degenerative and causally related to the arduous physical duties of a letter carrier.”

In an April 24, 2012 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including postoperative reports, diagnostic test results, and a narrative report from Dr. Ward explaining how and why factors of his federal employment would have caused the claimed bilateral hip arthritis. It afforded him 30 days to submit additional evidence. In response, appellant submitted a May 2, 2012 letter explaining that he no longer received treatment from Dr. Ward, and had chosen Dr. Morley as his treating physician. He provided duplicate copies of his job description and Dr. Morley’s January 12, 2012 report.

By decision dated June 20, 2012, OWCP denied appellant’s claim as causal relationship had not been established. It accepted that the identified work factors of walking, standing, lifting, carrying, and climbing occurred as alleged. OWCP found, however, that the medical reports of record were insufficient to establish that the accepted work factors caused or aggravated bilateral hip arthritis. It further found that the record was incomplete, as appellant failed to submit the postoperative reports and test results as requested on April 24, 2012.

In a June 25, 2012 letter, counsel requested an oral hearing, held October 24, 2012. At the hearing, he contended that OWCP’s request for postoperative reports and test results was improper as there was no medical opinion explaining why they were relevant to establishing causal relationship. Counsel also contended that appellant’s physicians provided sufficient opinion, “based on a complete and accurate relevant medical history,” to establish causal relationship.

After the hearing, counsel provided an October 24, 2012 memorandum reiterating that OWCP should not have requested that appellant submit postoperative reports and test results. He contended that OWCP should not have requested a report from Dr. Ward as he no longer treated appellant. Counsel noted that appellant only had to show that his federal employment contributed to the claimed condition. In an October 24, 2012 affidavit, appellant asserted that, other than his postal employment, his activities included driving to and attending his son’s sports activities, camping, playing catch, and breeding fish in several aquariums in his basement.

By decision dated and finalized January 22, 2013, an OWCP hearing representative affirmed OWCP’s June 20, 2012 decision, finding that causal relationship had not been established. He found that Dr. Marvin opined that appellant’s hip arthritis was congenital, while Dr. Ward did not address its etiology. Dr. Morley inaccurately stated that appellant had no significant family illnesses, failing to address appellant’s father’s history of early degenerative hip osteoarthritis as noted by Dr. Marvin. The hearing representative therefore found that Dr. Morley’s opinion was of diminished probative value as it was based on an incomplete, inaccurate medical history.

In an August 27, 2013 letter, counsel requested reconsideration. He submitted an August 23, 2013 report from Dr. Morley, stating that he did not mention the potential congenital nature of the arthritis as this was unrelated to the issue of causal relationship. Dr. Morley asserted that the hereditary component of osteoarthritis did not negate the contribution of work factors in accelerating the condition. He stated that the “repetitive stresses” of appellant’s job

duties “hastened the progress of his arthritic disease much more so than someone with a sedentary occupation.” Dr. Morley noted that degenerative arthritis in the lower extremities was permanently progressive due to wear and tear forces with weight bearing. Appellant’s duties as a letter carrier caused “greater stresses on the lower extremity weight bearing joints” than in everyday life, accelerating the arthritic process that culminated in bilateral hip replacements.

Counsel submitted statements from appellant’s wife and father, asserting that appellant’s duties as a letter carrier contributed to the development of bilateral hip arthritis because his symptoms began during his postal employment.

In a November 8, 2013 letter, appellant’s supervisor noted that appellant no longer carried mail. During the time he did carry a mail satchel, it sometimes weighed less than 35 pounds.

By decision dated November 18, 2013, OWCP denied modification, finding that the additional evidence was insufficient to alter the January 22, 2013 decision. It found that Dr. Morley had not explained “how the underlying condition was accelerated or materially adversely affected by the employment activities.” Regarding the statements from appellant’s wife and father, OWCP noted that the fact that a condition manifests during a period of employment did not establish causal relationship between work factors and the claimed condition.

In a November 5, 2014 letter, counsel requested reconsideration. He provided an October 30, 2014 report from Dr. Morley asserting that bending, kneeling, lifting, climbing and squatting at work caused the acceleration of appellant’s hip condition in 2009 as observed by Dr. Ward. Dr. Morley cited seven medical studies supporting the pathophysiologic interrelationship of work tasks and the chemical and biologic processes of degenerative lower extremity arthritis. He adopted the conclusions of these studies as applicable to appellant’s specific work tasks and clinical presentation. Dr. Morley asserted that this literature proved that appellant’s duties as a letter carrier contributed to the degeneration of his hips by creating joint stress that effaced articular surfaces.

By decision dated January 8, 2015, OWCP denied modification on the grounds that the additional evidence was insufficient to establish causal relationship. It found that Dr. Morley had not provided sufficient rationale explaining how and why work factors caused or contributed to degenerative arthritis. Additionally, Dr. Morley did not discuss the impact of the preexisting osteoarthritis on appellant’s condition. OWCP further found that the citations to medical literature were of no probative medical value as they did not address appellant’s specific history, presentation, and work factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA; 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.⁸ 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.⁹

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.¹⁰ 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 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 claimant.¹¹

ANALYSIS

Appellant attributed the development of his bilateral hip osteoarthritis to repetitive standing, walking, stair-climbing, and lifting while delivering mail beginning in 1988. However, he had no lower extremity symptoms until after an accepted traumatic right upper leg injury on January 5, 2006, accepted under File No. xxxxxx161. Bilateral hip pain prompted him to seek medical care, resulting in the diagnosis of osteoarthritis. Dr. Marvin, an attending Board-certified orthopedic surgeon, did not attribute the osteoarthritis to either the traumatic injury or repetitive activity over time. Rather, he opined on July 23, 2009 that appellant's arthritis was "probably congenital" as appellant's father also had early onset, severe osteoarthritis. Thus, the medical and factual evidence of record presents three possible mechanisms of causation: traumatic; congenital; and occupational activities. A complete discussion of appellant's history would entail an analysis of each proposed etiology.

Dr. Ward, an attending Board-certified orthopedic surgeon, noted on September 15, 2009 that appellant's bilateral hip osteoarthritis progressed significantly between February and August 2009. He performed bilateral hip arthroplasties in 2010. However, Dr. Ward did not

⁸ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁹ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁰ 20 C.F.R. § 10.5(q).

¹¹ *Solomon Polen*, 51 ECAB 341 (2000).

explain how and why work factors, the traumatic injury, or a genetic predisposition influenced the development of the claimed condition. His opinion is therefore insufficient to establish causal relationship.¹²

Dr. Morley, an attending Board-certified orthopedic surgeon, submitted a January 12, 2012 report noting both that appellant sustained a traumatic upper right leg injury on January 5, 2006, and that appellant had no history of trauma to either hip. He also stated that appellant had “[n]o significant family illness,” indicating he was unaware that appellant’s father had early onset degenerative arthritis. The inaccurate, incomplete nature of the history upon which Dr. Morley relied significantly diminishes the probative value of his opinion. His equivocal statement that appellant’s duties as a letter carrier “most likely” caused the claimed osteoarthritis is therefore insufficient to meet appellant’s burden of proof.¹³

Dr. Morley attempted to clarify his opinion in an August 23, 2013 report, asserting that he deliberately omitted appellant’s genetic history because any congenital cause was irrelevant in determining causal relationship. He noted on October 30, 2014 that the physical stresses of appellant’s job accelerated his condition in 2009, as observed by Dr. Ward. However, Dr. Morley did not explain in detail how the accepted work factors of walking, climbing, standing, bending, and squatting would aggravate or accelerate appellant’s osteoarthritis. The lack of medical rationale further diminishes the probative quality of his opinion.¹⁴

Dr. Morley cited medical literature on the effect of physically demanding occupations on the development of lower extremity osteoarthritis. However, the Board has held that medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee’s federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.¹⁵ This material has probative value only to the extent that it is interpreted and cited by a physician rendering an opinion on the causal relationship between a condition and specified employment injury.¹⁶ Dr. Morley cited the journal articles in support of load stress activities causing and accelerating degenerative osteoarthritis. He expressed his agreement with the research conclusions, but did not provide a complete explanation of how these mechanisms were present in appellant’s case. The Board, therefore, finds that the cited literature is of limited probative value and is insufficient on its own to establish causal relationship. However, as Dr. Morley’s opinion is also significantly diminished by its incomplete and inaccurate history, the relative weight of the cited medical literature is moot.

¹² *Id.*

¹³ *Ricky S. Storms*, 52 ECAB 349 (2001).

¹⁴ *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹⁵ *Gloria J. McPherson*, 51 ECAB 441 (2000); *William C. Bush*, 40 ECAB 1064, 1075 (1989); *N.B.*, Docket No. 14-1702 (issued December 29, 2014); *S.A.*, Docket No. 13-1551 (issued December 17, 2013).

¹⁶ *C.S.*, Docket No. 12-1169 (issued November 5, 2012); *Harlan L. Soeten*, 38 ECAB 566, 567 (1987).

Appellant's wife and father submitted statements supporting a causal relationship between appellant's job duties and his bilateral hip arthritis. However, there is no evidence that either individual was a qualified physician under FECA. The Board has held that the statement of a layperson is not competent evidence on the issue of causal relationship.¹⁷ Therefore, their opinions are of no probative medical value.

The Board notes that by letter dated April 24, 2012 OWCP advised appellant of the necessity of submitting her physician's statement explaining how and why the accepted work factors would impact the claimed bilateral hip osteoarthritis. As appellant's physicians did not provide such rationale, OWCP's January 8, 2015 decision denying his claim is proper under the law and facts of the case.

On appeal, counsel filed a brief which argues that OWCP erred by failing to obtain "medical opinion confirming or disputing" that of Dr. Morley. Dr. Morley's reports, however, were of insufficient probative quality to warrant additional development. Counsel further contends that OWCP claims examiner was barred as a layperson from ruling on the probative value of Dr. Morley's opinion without first obtaining a medical review of the evidence.¹⁸ However, the Board notes that under section 8124 of FECA,¹⁹ OWCP shall determine and make findings of fact with respect to an award for or against payment of compensation. FECA's implementing regulations further provide that an OWCP decision shall contain findings of fact and a statement of reasons.²⁰ Therefore, counsel's assertion that OWCP was prohibited from evaluating the probative value of Dr. Morley's opinion is without merit.

Counsel also argues that OWCP misstated the standard of causal relationship by finding that Dr. Morley failed to explain whether obesity or the aging process contributed to appellant's arthritis. He argues that OWCP was effectively holding that work factors must be the exclusive cause of the claimed condition. Counsel cites to Board precedents on the axiomatic principle that causal relationship is established if work factors contributed to the claimed condition in any degree.²¹ Dr. Morley's opinion was not based on a complete, accurate factual and medical history. An element of this omission is his failure to discuss other factors affecting appellant's health, such as obesity and aging. The Board notes that there is no indication that OWCP properly found that it was necessary in this claim for the treating physician to identify and discuss all the medical history related to appellant's hip condition. OWCP misinterpreted or misapplied the appropriate standard of causal relationship.

¹⁷ See *James A. Long*, 40 ECAB 538 (1989); *Susan M. Biles*, 40 ECAB 420 (1988).

¹⁸ Counsel cited to Board precedents holding that a layperson's opinion on the medical issue of causal relationship is of no probative value, including *J.G.*, Docket No. 15-251 (issued April 13, 2015) and *Gloria J. McPherson*, 51 ECAB 441 (2000).

¹⁹ 5 U.S.C. § 8124.

²⁰ 20 C.F.R. § 10.126.

²¹ *L.C.*, Docket No. 12-1949 (issued January 3, 2013); *Rudy C. Sixta, Jr.*, 44 ECAB 727 (1990); *Glenn C. Chasteen*, 42 ECAB 493 (1991); *Arnold Gustafson*, 41 ECAB 131; *Beth Chaput*, 37 ECAB 158 (1985).

Counsel also asserts that OWCP's January 8, 2015 decision contained an "[i]mproper quote of law on citation of research." He cited to Board precedents holding that medical tests are of little probative value in establishing causal relationship unless the physician applies the general principles discussed to the specific facts of the claimant's case.²² However, the probative weight of this literature is moot because Dr. Morley's opinion rests on an incomplete and inaccurate history.

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 did not establish that he sustained an aggravation or acceleration of bilateral hip arthritis in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 8, 2015 is affirmed.

Issued: July 17, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

²² *James Rogy, Jr.*, Docket No. 05-1247 (issued December 8, 2005); *Ralph L. Streever*, Docket No. 95-1454 (issued August 6, 1997); *Ruby I. Fish*, 46 ECAB 276 (1994); *Kathy Marshall (Dennis Marshall)*, 45 ECAB 827 (1994); *Edna C. Drinkwine*, 10 ECAB 511 (1959).