

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

W.G., Appellant

and

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

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**Docket No. 16-0667
Issued: May 18, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 22, 2016 appellant, through counsel, filed a timely appeal of a December 9, 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish osteoarthritis of the left hip due to factors of his federal employment.

On appeal counsel argues that the July 31, 2014 report of Dr. Byron V. Hartunian, an orthopedic surgeon, was sufficient to meet appellant's burden of proof. He provided his disagreement with each of the points raised by OWCP's hearing representative in regard to Dr. Hartunian's report.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 20, 2014 appellant, then a 67-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed an acceleration of his osteoarthritis in his right knee due to his employment duties. He indicated that he first became aware of his condition and first attributed his condition to his employment on June 18, 2014. On the reverse of the form, appellant's supervisor indicated that he had retired from the employing establishment on August 31, 2011.

Appellant noted that he was not certain when his right knee arthritis began, but believed that this condition was evidenced on x-rays in 2010. He further indicated that his hip arthritis was diagnosed in 2010 at the same time as trochanteric bursitis. Appellant described his job duties of climbing in and out of his truck 400 times a day, loading and unloading mail and parcels, climbing stairs to make deliveries, lifting, carrying, pushing, pulling, climbing, bending, stooping, driving a truck, and maneuvering heavy equipment weighing up to 1,000 pounds. He indicated that his route required both collections and deliveries and that he spent 8 to 10 hours a day performing his job activities.

Dr. Christopher W. Digiovanni, a Board-certified orthopedic surgeon, examined appellant on September 11 and October 2, 2003 due to complaints of right ankle pain. He diagnosed early arthrosis and opined that this was a preexisting condition exacerbated by appellant's job duties. In a note dated January 20, 2010, Dr. Randal Kaufman, a Board-certified internist and cardiologist, diagnosed "arthritic type" pain in the knees and ankles.

On January 28, February 11, and June 18, 2010, and February 3 and August 8, 2011 Dr. Amparo Gordian, a Board-certified internist and rheumatologist, diagnosed trochanteric bursitis, osteoarthritis right hip, bilateral knee osteoarthritis, patellafemoral syndrome, osteoarthritis, and arthralgia bilateral lower extremities. He indicated that appellant pointed to his left trochanteric bursa and described burning pain when walking or sitting.

Dr. Saul Magitsky, a Board-certified orthopedic surgeon, treated appellant on February 2, 2010 for bilateral knee pain, as well as right hip, ankle, and heel pain. He reviewed radiographs of the knees and right ankle and found evidence of degenerative changes consistent with loss of joint space in the medial compartment and early osteophyte formation.

Dr. Robert M. Shalvoy, a Board-certified orthopedic surgeon, examined appellant on December 20, 2012 and reported findings of bilateral knee and right hip pain. He noted that he had previously treated appellant for knee osteoarthritis. Appellant had undergone a left knee arthroscopy in the past. Dr. Shalvoy found that appellant's hip motions were full bilaterally without any pain or instability. He also found mild varus alignment in appellant's knees with crepitation and diffuse tenderness. Dr. Shalvoy examined x-rays including anteroposterior views of the pelvis and lateral views of the right hip and found some sclerosis on the superior rim of the acetabulum and some calcification off the greater tuberosity. He concluded that these x-rays otherwise demonstrated normal osseous anatomy. Dr. Shalvoy diagnosed right hip strain and bilateral knee osteoarthritis.

In a report dated January 24, 2013, Dr. Digiovanni examined appellant due to heel and ankle pain.

Appellant's pelvic x-rays dated March 14, 2014 demonstrated osteoarthritis of the hips and lumbosacral spine with mild narrowing of the hip joints, spurring of the acetabula and femoral heads, evidence of possible old fractured spurs, and large left lumbosacral osteophytes as well as calcification of the bilateral sacrotuberal ligaments.

Dr. Hartunian completed a report on July 31, 2014. He noted reviewing appellant's medical records and job description. Dr. Hartunian described appellant's right ankle condition and treatment as well as his right knee pain beginning in 2010. He indicated that in February 2010 appellant received a diagnosis of right hip bursitis. Dr. Hartunian reviewed Drs. Gordian's and Shalvoy's reports regarding appellant's lower extremities including left knee arthroscopy in 2006. He found that Dr. Gordian followed appellant for left hip pain and diagnosed osteoarthritis and bursitis. Dr. Hartunian examined the December 20, 2012 x-rays from Dr. Shalvoy and found arthritis of the hip specifically the superior rim of the acetabulum on the right. He found that x-rays indicated that the femoral heads were spherical with narrowing of the medial femoralacetabular joint bilaterally to two millimeters of cartilage interval. Dr. Hartunian noted that there was no separate radiological report of the December 20, 2012 x-rays, but that the record of Dr. Shalvoy was consistent with this assessment.

Dr. Hartunian examined appellant and found palpable tenderness over the greater trochanter area of the hips bilaterally, with limited range of motion, and groin pain on combined flexion and rotation. He diagnosed right and left hip trochanteric bursitis and arthritis with two millimeters of cartilage interval at the medial femoralacetabular joint, right knee arthritis with three millimeters of cartilage interval at the medial femorotibial, and knee joint arthritis on the left.

Dr. Hartunian defined arthritis as a failure and loss of articular cartilage surface. He opined that the progression of arthritis was accelerated through a process of impact loading resulting from repeated local stresses causing chronic inflammation. Dr. Hartunian noted that appellant's job required constant and repetitive walking, squatting, stooping, climbing, bending, lifting, carrying, stair climbing, and twisting. He found, "It is the impact loading resulting from these heavy physical duties and the constant and continuous repeated local stresses regularly occurring over the course of a workday and which is repeated day after day that accelerates the progression of the underlying arthritis." Dr. Hartunian further indicated, "The primary chemical change is the loss of proteoglycans and is initiated by activation of degradative enzymes associated with inflammation. These proteoglycans are responsible for cartilage resilience and their loss from the cartilage results in a stiffer material that is more easily damaged by 'wear and tear.'" He concluded that appellant's job duties were causative contributing factors to the development and progression of lower extremity arthritis. Dr. Hartunian noted that had appellant's work-related activities been of sedentary nature those activities would not have contributed to the progression of his bilateral hip and right knee arthritis to the same extent.

In a letter dated October 3, 2014, OWCP requested that appellant provide evidence that his claim was timely as well as supportive factual and medical evidence. It noted that he had previously filed a Form CA-2 for right hip, bilateral knee, right ankle, and right heel on

January 28, 2010. Appellant responded and indicated that he was not aware of the relationship between his employment and his conditions until he was examined by Dr. Hartunian on June 18, 2014. He further noted that OWCP denied his prior claim on March 30, 2010.

Appellant submitted his medical records from Dr. Shalvoy's office regarding his left knee dated from August 24, 2006, including the September 8, 2006 surgery, through June 2007.

OWCP referred the medical evidence in appellant's claim to the OWCP medical adviser on February 3, 2015. The medical adviser reviewed this evidence on February 5, 2015 and found that appellant had a history of right knee and right hip symptoms which were in part related to his work duties. He found that appellant's work-related duties aggravated the underlying degenerative changes in the right knee and hip advancing his osteoarthritis. The medical adviser further found that there was no evidence to support ongoing left hip issues. He noted that Dr. Hartunian found that Dr. Gordian was treating appellant for a left hip condition, but that the medical evidence did not support this finding. The medical adviser found that on January 28, 2010 Dr. Gordian noted that appellant was experiencing problems with his left trochanteric bursae, but noted no left hip abnormalities on examination on that date, nor on February 11, 2010. He noted that Dr. Shalvoy did not mention left hip symptoms.

By decision dated February 11, 2015, OWCP accepted appellant's claim for acceleration of right hip and right knee osteoarthritis, but denied acceptance of the left hip osteoarthritis.

Counsel requested an oral hearing with OWCP's Branch of Hearings and Review (BH&R) on February 23, 2015. In a memorandum dated September 23, 2015, he argued that Dr. Hartunian's report was sufficiently detailed and well reasoned to establish appellant's claim for left hip osteoarthritis as well as the two other conditions accepted by OWCP. Counsel appeared at the oral hearing before a hearing representative of OWCP's BH&R on September 23, 2015 and argued that x-rays supported the diagnosis of left hip osteoarthritis due to appellant's employment duties.

By decision dated December 9, 2015, OWCP's hearing representative found that the medical evidence did not establish appellant's claim for a left hip condition due to his federal job duties.

LEGAL PRECEDENT

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 claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between

the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.²

ANALYSIS

The Board finds that appellant has not submitted the necessary medical evidence to establish a causal relationship between his diagnosed left hip osteoarthritis and his accepted employment duties.

Appellant submitted a report dated July 31, 2014 from Dr. Hartunian addressing the causal relationship between appellant's left hip condition and his employment duties. He relied on appellant's medical record finding that Dr. Gordian diagnosed left hip pain with osteoarthritis and bursitis. The Board found in reviewing Dr. Gordian's reports that he indicated that appellant pointed to his left trochanteric bursa and described burning pain when walking or sitting. While Dr. Gordian diagnosed right knee and hip osteoarthritis he did not diagnose any left lower extremity condition other than arthralgia bilateral lower extremities. Given his clear diagnosis of osteoarthritis when addressing appellant's right lower extremity conditions, the Board finds this distinction with regard to appellant's left hip compelling evidence that he was not supporting osteoarthritis of the left hip.

Dr. Hartunian further relied on December 20, 2012 x-rays taken by Dr. Shalvoy finding that these demonstrated left hip osteoarthritis. Dr. Shalvoy reviewed these x-rays in his December 20, 2012 report, but did not explicitly diagnose left hip osteoarthritis or any left hip condition. He found some sclerosis on the superior rim of the acetabulum and some calcification of the greater tuberosity on the right hip. Dr. Shalvoy concluded that these x-rays otherwise demonstrated normal osseous anatomy. He diagnosed right hip strain. The Board is unable to determine how Dr. Hartunian extrapolated Dr. Shalvoy's findings and conclusions based on review of his report without a separate review of the prior x-rays or a separate x-ray report including additional findings of cartilage intervals and specific findings on the left.

The Board finds that the first clear and exact diagnosis of left hip osteoarthritis is made in appellant's pelvic x-rays dated March 14, 2014. Dr. Hartunian's July 31, 2014 report also provided findings on physical examination and a diagnosis of both left hip trochanteric bursitis and arthritis. Although he explained how appellant's employment duties accelerated the previously diagnosed conditions of right knee and right hip osteoarthritis, Dr. Hartunian did not provide a separate explanation of how or why appellant's left hip osteoarthritis would be impacted by his employment almost three years after this employment ended.

The Board further notes that OWCP's medical adviser reviewed the medical record and found that the evidence was insufficient to support Dr. Hartunian's findings of left hip arthritis accelerated by appellant's employment. The medical adviser disagreed with Dr. Hartunian's characterization of Drs. Gordian's and Shalvoy's reports with regard to appellant's ongoing left hip condition. Only Dr. Shalvoy read appellant's December 2012 x-rays on a date several months after appellant's employment ceased and he did not diagnose a specific left hip condition

² *Lourdes Harris*, 45 ECAB 545, 547 (1994).

based on those x-rays. Contrary to counsel's arguments on appeal, the Board finds that as Dr. Hartunian mischaracterized the contemporaneous medical evidence with regard to appellant's left hip condition, his report dated July 31, 2014, is not sufficiently detailed to establish a causal relationship between appellant's employment exposures ending in 2011 and his left hip osteoarthritis diagnosed in 2014.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish left hip osteoarthritis due to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board