

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH E. WILLIAMS and DEPARTMENT OF THE AIR FORCE,
AIR FORCE ACADEMY, WORKSHOP TEN, Colorado Springs, CO

*Docket No. 00-580; Submitted on the Record;
Issued February 1, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an aggravation of preexisting arthritis and degenerative joint disease of the left hip in the performance of duty.

On July 8, 1998 appellant, then a 47-year-old precision electronic equipment mechanic, filed a notice of occupational disease alleging that he sustained an aggravation of degenerative joint disease in his left hip the performance of duty, on or before May 28, 1998. He attributed his condition to frequent lifting and carrying of 50 to 100 pound loads. The record indicates that appellant did not stop work, and was last exposed to the alleged work factors on March 18, 1999.

The employing establishment noted that appellant's position required him, as part of a two-person team, to calibrate physician's scales weighing from 400 to 1,000 pounds, placing 50-pound cast iron standard weights on a low platform, and using a cart or truck to carry the weights for long distances, including "pushing a cart into an elevator or up an entry ramp. Carrying weights across uneven surfaces or up and down stairs is not required."

In an October 9, 1998 report, Dr. John S. O'Keeffe, an attending Board-certified family practitioner indicated that appellant was partially disabled for an indefinite period beginning June 18, 1998, and recommended light-duty work. Dr. O'Keeffe stated that appellant was "unable to walk long distances and lift repetitive loads with his legs or arms." He prescribed physical therapy and medication.¹

In a January 7, 1999 report, Dr. O'Keeffe noted treating appellant from June 18, 1998 onward for arthritis. Appellant initially presented with bilateral hip and knee complaints, and a

¹ In a May 13, 1999 letter, the Office of Workers' Compensation Programs requested that Dr. O'Keeffe review an enclosed copy of the statement of accepted facts, respond to questions regarding temporary and permanent aggravation, and submit a rationalized opinion regarding causal relationship. The record indicates that Dr. O'Keeffe did not respond to the Office's letter.

history of a possible avascular necrosis of the left hip. X-rays obtained at that time² showed left hip “arthritis, probably consistent with prior problems. Certainly any kind of weight-bearing activity would aggravate that.” Dr. O’Keefe stated that appellant’s left hip problem was “related to a prior problem with arthritis aggravated by work conditions” and that “restrictions on his walking, carrying and related activities were needed.”

On July 8, 1999 the Office referred appellant, the medical record and a statement of accepted facts to Dr. Jeffrey M. Hrutkay, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Hrutkay submitted a July 26, 1999 report, noting a history of Perthe’s disease of the left hip,³ and appellant’s complaints of joint pain throughout the upper and lower extremities.⁴ He noted that appellant’s left lower extremity was 1.5 centimeters shorter than the right, a normal range of left hip motion without crepitation, and “decreased internal rotation of the right hip.” Dr. Hrutkay diagnosed mild degenerative arthritis of the left hip with a childhood history of Perthe’s disease, and “[m]ultiple upper and lower extremity joint complaints” possibly attributable to subclinical systemic arthritis. He explained that appellant’s x-ray findings and subjective complaints of the left hip were consistent with the natural course of Perthe’s disease, as “hip arthritis may develop 30 to 40 years following the onset of this condition.” Dr. Hrutkay stated that appellant’s other multiple joint symptoms did “not appear to be related to ... lifting and physical labor” at work, as there were “no specific on-the-job injuries to explain his multiple joint complaints.” He elaborated that there did not appear to be “any temporary or permanent aggravation to the underlying left hip arthritic condition. This condition is expected, by its natural history, to become progressively worse with time just in the course of day-to-day activities.”⁵

By decision dated August 19, 1999, the Office denied appellant’s claim on the grounds that causal relationship was not established. The Office found that the weight of the medical evidence rested with Dr. Hrutkay. The Office noted that Dr. O’Keefe failed to respond to the Office’s May 13, 1999 letter requesting his rationalized opinion regarding causal relationship.

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

² May 19, 1998 left hip x-rays showed “minimal joint space narrowing,” consistent with “minimal” degenerative changes.

³ Perthe’s disease, also known as Legg-Calve-Perthe’s disease, is an “epiphysial aseptic necrosis of the upper end of the femur.” STEDMAN’S MEDICAL DICTIONARY (5th Unabridged Lawyer’s Ed.,982) at 408.

⁴ On examination, Dr. Hrutkay found bilateral tenderness “over the lateral epicondyle” and the dorsal aspect of both forearms, lower lumbar tenderness with normal range of motion, bilateral parapatellar tenderness, and normal motor and sensory findings in both lower extremities.

⁵ In an attached June 21, 1999 work restriction evaluation, Dr. Hrutkay limited lifting to 30 pounds, restricted overhead reaching, and recommended intermittent sitting, walking, standing and reaching. He noted that the restrictions were “based on nonwork[-]related complaints.”

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.⁶

In this case, Dr. O’Keeffe, appellant’s Board-certified family practitioner, opined in October 9, 1998 and January 7, 1999 reports that appellant’s work activities of repetitive lifting, walking “long distances” and “weight-bearing activity” aggravated his preexisting left hip arthritis related to a childhood history of aseptic necrosis of the left femoral head. Dr. O’Keeffe thus restricted “walking, carrying and related activities.”

Dr. Hrutkay, a Board-certified orthopedic surgeon and second opinion physician, also opined that appellant’s left hip arthritis was due to his history of Perthe’s disease, but that work activities had no effect on appellant’s condition. The Board finds that Dr. Hrutkay’s opinion is in conflict with that of Dr. O’Keeffe. In his July 8, 1999 report, Dr. Hrutkay stated that appellant’s left hip arthritis would be expected to progress over time with “day-to-day” activities. Dr. Hrutkay, found however, that appellant’s work activities, which involved repeated lifting of weights over 50 pounds, had no effect on his condition.

There is an outstanding conflict of medical opinion between Dr. O’Keeffe and Dr. Hrutkay. The Federal Employees’ Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: “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 an examination.”

The case will 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 an examination and a rationalized medical opinion to resolve the medical conflict regarding whether appellant’s left hip condition was aggravated by work factors. Following this and other such development the Office deems necessary, the Office shall issue an appropriate decision in the case.

⁶ *Charles E. Burke*, 47 ECAB 185 (1995).

The decision of the Office of Workers' Compensation Programs dated August 19, 1999 is hereby set aside and the case remanded for further development consistent with this decision and order.

Dated, Washington, DC
February 1, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member