

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERNARD E. PORTER and DEPARTMENT OF THE ARMY,
CORPUS CHRISTI ARMY DEPOT, Corpus Christi, TX

*Docket No. 03-1393; Submitted on the Record;
Issued September 12, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant established that he sustained an injury in the performance of duty on June 7, 1989, as alleged.

On June 8, 1989 appellant, then a 27-year-old aircraft electrical systems mechanic for the Department of the Air Force, completed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on June 7, 1989 his vehicle was struck in the rear by a truck, and that he sustained a headache and stiff neck. Appellant was seen on the date of the accident by the employing establishment's medical clinic, where it was reported that he had sustained a possible whiplash injury and appellant was released to return to work. The claim form was not filed with the Office of Workers' Compensation Programs as there was no time lost from work and treatment was received at the employing establishment's medical facility.

On January 15, 1992 appellant was seen by "PN" who noted that appellant complained of seven months of right hip pain. The chart note indicates that appellant stated that he twisted in the shower. Appellant noted no antecedent difficulties with his hip. Subsequently, appellant sought treatment at the same facility on January 20, February 21, March 13 and June 12, 1992. In the February 21, 1992 report, the notes indicate that appellant could not recall any definite severe trauma to the right hip, and indicate that the bone scan was consistent with early degenerative arthritis.

On December 11, 2000 appellant, now an integrated electronic systems mechanic with the employing establishment, completed another Form CA-1 alleging that on December 8, 2000 as a result of picking up hellfire launchers and missiles and repeatedly climbing into an aircraft, he pulled something in his lower left back and aggravated his right hip. Appellant sought treatment from the employing establishment's medical facility, and again as no time was lost or medical bills incurred, the claim was not filed.

On February 24, 2001 appellant filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that the motor vehicle accident of June 7, 1989 resulted in

the development of degenerative arthritis in his right hip. The employing establishment controverted the claim.

In support of his claim, appellant submitted a medical report dated February 15, 2001 by Dr. Michael W. Britt, an orthopedic surgeon, who noted that appellant was involved in a 1989 motor vehicle accident on the job at which time appellant had an injury to his right hip. He further indicated that appellant now had severe degenerative joint disease of the right hip. Dr. Britt opined:

“This injury, I believe, is most likely directly related to his accident in 1989. It is very reasonable that the impact injury is exacerbated or led to an arthritis that he now has in his right hip. As a result of that right hip arthritis, he has had increased stress transferred to the left hip and is now subsequently developing left hip arthritis in direct relationship to what should be a compensable claim regarding his right hip, therefore both hips should be covered by the [w]orkers’ [c]ompensation claim.”

By decision dated April 18, 2001, the Office denied appellant’s claim as it found that the medical evidence was not sufficient to establish that appellant’s condition was caused by the injury.

By letter dated May 17, 2001, appellant requested an oral hearing, which was held on February 27, 2002. At the hearing, appellant testified that he had no problems with his hip prior to 1989. Appellant described the accident of June 7, 1989 and noted that there was no apparent problem with his hip at that time. He noted that he first discovered that he had arthritis in 1992. Due to a reduction-in-force, appellant moved to Corpus Christi in 1994 and began working for the employing establishment. Appellant began to see Dr. Britt in February 2001 and had his hip replaced in November of that year.

In further support of his claim, appellant submitted additional reports by Dr. Britt. In a May 17, 2001 report, Dr. Britt noted:

“[Appellant] had an event in 1992 and was noted to have some degenerative changes in his hip present at that time. He had slipped in the shower immediately prior to that visit. There was insufficient time for the type of event he describes from slipping in the shower to lead to his degenerative changes. The most likely etiology of those findings is that the degenerative changes existing in his hip were caused by the accident in 1989, which caused his hip to give way, which, in turn, he fell in the shower. Even his event of slipping in the shower is a result of his on-the-job injury in 1989.”

In a January 24, 2002 report, he further indicated:

“[L]et me say without hesitation or reservation that in all medical probability that your 1989 work accident led to your current condition of arthritis in your hip. For that I recommended that you consider total hip arthroplasty and gave you a hip monograph which went over total hip replacement surgery.”

By decision dated May 24, 2002, the hearing representative denied appellant's claim for the reason that appellant has not submitted medical evidence sufficient to establish his claim for compensation. The hearing representative noted that Dr. Britt did not provide a sufficiently reasoned medical explanation as to how appellant's degenerative arthritis of the right hip was causally related to the June 7, 1989 motor vehicle accident when the problems with his hip did not appear until two years later and after appellant fell in the shower.

By letter dated November 20, 2002, appellant, through his attorney, requested reconsideration. In support thereof, appellant submitted a November 8, 2002 report wherein Dr. Britt opined:

"In response to your question concerning [appellant's] injury of 1989, it is very likely that a chondral or osseous contusion would immediately resolve with regards to the acute pain symptomatology but subsequently develop pain in the interval. Physiologic processes involved in bone and cartilage degeneration, regeneration, and repair occur over a very slow and gradual process and rarely progress rapidly. In [appellant's] case it is very likely that he sustained an osteochondral injury that weakened this area of bone but subsequently healed sufficiently for his immediate pain to resolve but insufficiently to prevent him from having any future arthritic complications. He would now have a roughened area of cartilage within the previous spherical femoral head. This would begin to rub and grind against the previously smooth acetabular cartilage. This gradual wearing and grinding would eventually lead to arthritic findings which would take over a year to present and develop sufficiently for him to notice.

"The subsequent complaint of hip pain on January 15, 1992, fits perfectly with the expected pathophysiology that he would have sustained and would subsequently take less stress and less force for him to sustain an injury or have further damage. This would concur with his description of an event when he twisted his hip in the shower. He was subsequently seen and received a total hip replacement on the right side on November 6, 2001, almost 12 years after his original injury and would be a very expected time course for the progression and development of his symptoms.

"In all medical probability the arthritic findings of his hip in a man at this age found in November 2001 were directly related to his on-the-job injury in 1989."

By decision dated February 12, 2003, the Office denied modification of the prior decision.

The Board finds that appellant has not established that he sustained an injury on June 7, 1989 as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the

¹ 5 U.S.C. §§ 8101-8193.

individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained 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 compensation claim regardless of whether the claim is predicated upon a traumatic injury or an 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 addressed in 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 Appellant has met this criteria. The second component is whether the employment incident caused a person's injury and generally can only be established by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such causal relationship.⁵ 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.⁶

In the case at hand, Dr. Britt opined in his February 15, 2001 medical report, "In all medical probability the arthritic findings of his hip in a man at this age found in November 2001 were directly related to his on-the-job injury in 1989." He noted, "[I]t is very likely that he sustained an osteochondral injury that weakened this area of bone but subsequently healed sufficiently for his immediate pain to resolve but insufficiently to prevent him from having any future arthritic complications." In his May 17, 2001 report, Dr. Britt added, "There was insufficient time for the type of event he describes from slipping in the shower to lead to his degenerative changes. The most likely etiology of those findings is that the degenerative changes existing in his hip were caused by the accident in 1989, which caused his hip to give way, which, in turn, he fell in the shower." Dr. Britt's opinions rely on the fact that appellant had hip pain following his 1989 incident. For example, in his patient history portion of the February 15, 2001 report, Dr. Britt notes that appellant had hip pain after the 1989 accident, from which he had recovered. In his November 8, 2002 report, Dr. Britt indicated that it was very

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁴ *Caroline Thomas*, 51 ECAB 451, 455 (2000).

⁵ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

⁶ *Id.*

likely that appellant sustained an osteochondral injury that weakened his hip but that he subsequently healed sufficiently for his immediate pain. However, there is no evidence in the record that appellant had hip pain following the 1989 accident. In fact, the Board notes that appellant did not see a physician for hip pain until January 15, 1992, two and one-half years after his June 7, 1989 accident. Furthermore, appellant testified that he had no hip problems at the time of his accident. Due to these discrepancies, Dr. Britt's report is of diminished probative value to establish appellant's entitlement to benefits.

The decisions of the Office of Workers' Compensation Programs dated February 12, 2003 and May 24, 2002 are hereby affirmed.

Dated, Washington, DC
September 12, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member