

June 30, 2002, appellant indicated that, in completing a sales transaction for a lottery ticket, she had turned her upper body and felt a burning pain in the upper right leg. She reported that every time she worked the lottery machine she felt the burning pain. The employing establishment submitted a July 10, 2002 letter controverting the claim, stating that appellant could not remember when the initial incident occurred and she had preexisting right leg medical conditions. The employing establishment indicated that appellant stopped working on May 15, 2002.

By decision dated September 12, 2002, the Office denied the claim on the grounds that the medical evidence did not establish an injury causally related to federal employment. Appellant requested a hearing before an Office hearing representative, which was held on April 22, 2003.

In a report dated October 7, 2002, Dr. Joseph Falcone, an orthopedic surgeon, stated that appellant had a hip condition and it was employment related. In a December 12, 2002 report, Dr. Falcone diagnosed degenerative arthritis secondary to avascular necrosis of the right hip. On February 21, 2003 appellant underwent right hip replacement surgery.

By decision dated June 12, 2003, the hearing representative affirmed the September 12, 2002 Office decision.

On April 12, 2004 the Office received an undated report from Dr. Falcone, who noted that he reviewed medical records and appellant's job description. He further stated:

"I have had [appellant] demonstrate how she performed her job as a cashier at the [employing establishment]. She would twist at the hip to throw out redeemed lottery tickets in the garbage can behind her. This motion is quite capable of increasing pressure in the head of the femur and disrupting its blood supply. Blood supply disruption is the cause of avascular necrosis. Although the [employing establishment] argues that [appellant] did not perform the twisting motion often, it is important to note that even occasional increased stress and pressure on the femur can cause avascular necrosis. This is especially true if the blood supply to the head of the femur is already compromised."

Dr. Falcone stated that he reviewed medical records and there was no history that appellant had risk factors for avascular necrosis and that she had developed the upper thigh pain that was a symptom of avascular necrosis while twisting during her job at the employing establishment. He concluded that appellant developed avascular necrosis as a result of her federal employment.

The Office referred the medical evidence to an Office medical adviser. In a report dated July 1, 2004, the medical adviser opined that appellant's condition was not employment related. He stated:

"The activities described in the [statement of accepted facts] are not sufficient in my opinion to cause avascular necrosis of the hip leading to a THR [total hip replacement]. If the theory set forth by Dr. Falcone is accepted we would see a high incidence of [avascular necrosis] of the hip in every cashier and store clerk

and every other standing occupation that requires some occasional pivoting or twisting of the body during the workday -- this is not the case. [Avascular necrosis] can occur from a number of factors and disease processes in different individuals. Her overweight condition (190 lb. 5'2") is one of those factors. Smoking, high blood pressure, etc. all effect the vascular system and the small blood vessels in particular. She also used cortisone cream which can be absorbed."

By decision dated July 6, 2004, the Office denied modification of the June 12, 2003 decision. Appellant requested reconsideration and submitted a January 3, 2005 report from Dr. Falcone, who discussed the causes of avascular necrosis and indicated that appellant's blood pressure, weight and use of cortisone cream were low risk factors. He reiterated his opinion that the condition was employment related.

In a decision dated April 14, 2005, the Office reviewed the case on its merits and denied modification of the July 6, 2004 decision.

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: a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition, medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed and medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and her federal employment.²

The Federal Employees' Compensation Act provides that, 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 the examination.³ The implementing regulation states that if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁴

¹ See *Victor J. Woodhams*, 41 ECAB 345 (1989).

² See *Walter D. Morehead*, 31 ECAB 188 (1979).

³ 5 U.S.C. § 8123(a).

⁴ 20 C.F.R. § 10.321 (1999).

ANALYSIS

The Board finds that there is a conflict in the medical evidence on the issue of whether appellant's right hip condition was causally related to her federal employment. The attending physician, Dr. Falcone, provided a reasoned opinion that the avascular necrosis was casually related to twisting at the hip while at work, since the twisting would disrupt the blood supply to the hip. An Office medical adviser disagreed, finding that appellant had other risk factors and the work activities were not sufficient to contribute to the diagnosed condition.

Pursuant to 5 U.S.C. § 8123(a), the case will be remanded to the Office to appoint a third physician as an impartial medical specialist to resolve the conflict. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision as a conflict in the medical evidence exists and must be resolved pursuant to 5 U.S.C. § 8123(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 14, 2005 and July 6, 2004 are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: October 17, 2005
Washington, DC

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

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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