

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

---

**JOHN B. CRONIN, Appellant**

**and**

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

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 06-101  
Issued: May 22, 2006**

*Appearances:*  
*John B. Cronin, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 20, 2005 appellant filed a timely appeal of an August 10, 2005 merit decision of the Office of Workers' Compensation Programs that found he had not submitted evidence sufficient to warrant modification of its determination that he did not have an employment-related permanent impairment of his right hip. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether appellant has an employment-related permanent impairment of his right leg.

**FACTUAL HISTORY**

On October 2, 2002 appellant, then a 51-year-old letter carrier, filed a claim for compensation for an occupational disease of osteoarthritis of the right hip. He claimed this condition was exacerbated by walking and lifting in his employment, and that it was a consequence of his left hip condition. The Office had previously accepted that appellant's

employment had permanently aggravated the osteoarthritis of his left hip. It authorized a total left hip replacement, which he underwent on January 25, 2001, and issued a schedule award for a 50 percent permanent loss of use of the left leg.

Appellant underwent a total right hip replacement on October 4, 2002. By decision dated December 18, 2002, the Office found that the medical evidence was not sufficient to establish that the claimed condition was causally related to his employment. Appellant requested reconsideration and submitted a report from Dr. Arnold D. Scheller, a Board-certified orthopedic surgeon, stating that “he had a left total hip replacement for the same work-related disorder” and that “the exacerbation of his right hip arthritis is causally and temporally related to his work as a letter carrier.” On March 25, 2003 Dr. Barry W. Levine, who is Board-certified in internal medicine and in pulmonary disease, reviewed the medical evidence for the Office and stated:

“Based on the bilateral nature of [appellant’s] osteoarthritis and his long history and relatively young age, I feel that the cause of the hip problem is related to either a congenital, metabolic or genetic condition. Recent incidental injury to a hip would not account for the development of osteoarthritis necessitating a total hip replacement. There is insufficient evidence to indicate the duties of a letter carrier as sufficient trauma to cause bilateral osteoarthritis of the hips. I do not feel that aggravation of right hip arthritis due to conditions of postal service employment as sufficient cause to necessitate a total hip replacement.”

On March 25, 2003 the Office advised appellant that it had accepted that his employment aggravated his right hip osteoarthritis.

On September 11, 2003 appellant filed a claim for a schedule award. He submitted a report from a physician’s assistant rating his impairment of the right leg at 50 percent based on a fair result of hip replacement surgery. Dr. Scheller stated that he agreed with this assessment of appellant’s permanent impairment. Dr. Levine again reviewed the medical evidence, pointed out that the Office had accepted aggravation of right hip osteoarthritis but not the right total hip replacement, and stated, “Since there has been a right hip replacement it is impossible to determine if any impairment of the right hip secondary to the aggravation of the osteoarthritis.”

By decision dated May 10, 2004, the Office found that the medical evidence failed to establish that appellant had a permanent impairment of his right hip as a result of an employment-related condition. Appellant requested reconsideration, noting that the Office approved “the same exact injury with the same exact evidence for my left hip.” By decision dated August 26, 2004, the Office found that appellant’s request for reconsideration was insufficient to warrant a review of the merits of his case.

Appellant requested reconsideration,<sup>1</sup> and submitted an October 18, 2004 report from Dr. Scheller, who stated, “I would like to make the causality of [appellant’s] right hip osteoarthritis very clear, it is in fact work related. It is the same affliction that caused a left total hip replacement for the same work-related disorder on January 25, 2001.” By decision dated

---

<sup>1</sup> Appellant also filed an appeal with the Board, which was docketed as No. 05-10, but later requested to withdraw the appeal. The Board issued an order dismissing this appeal on December 23, 2004.

February 8, 2005, the Office found that appellant's request for reconsideration was not sufficient to warrant review of its prior decisions.

On April 19, 2005 appellant requested reconsideration. He submitted an April 15, 2005 report from Dr. Scheller, who stated:

"As you know, [appellant] has been a letter carrier since October 1986. My understanding of the nature of his job is that it typically entailed five hours of walking a day, five days a week, delivering the mail, including walking up and down stairs. This was on top of a period of up to two hours per day, setting up his route and sorting mail, during which time he was to remain standing.

"Whatever his propensity for development of osteoarthritis, his work as a letter carrier exacerbated the underlying condition. That exacerbation of the underlying condition reached the point where, despite conservative measures, a total right hip replacement was warranted. His symptoms in the right hip (pain after sitting for long periods, pain at night, and x-ray findings) were now mimicking the same pattern as had pertained to his left hip.

"It is thus my opinion, to a reasonable degree of medical certainty, that just as in the case of the left hip, [appellant's] right total hip replacement surgery was necessitated by an employment-related aggravation of the osteoarthritic condition of his right hip. But for his employment as a letter carrier, [appellant] would have anticipated at least another decade before a right hip replacement would have been warranted for symptom relief. The work-related exacerbation of his condition hastened the need for the hip replacement."

Dr. Levine reviewed this report on August 9, 2005 and stated:

"Walking five hours per day five days a week has never been shown to cause osteoarthritis of the hip requiring a total hip replacement. The described physical activity is not unusual and is associated with many different jobs such as factory work, gardening, police work, night watchman activities and many other occupations. There is no evidence in the medical literature that letter carriers are more prone to develop osteoarthritis of the hip. Unfortunately the claimant had a predisposing condition which was associated with early osteoarthritis of the hip. This predisposition was not affected by his work activity nor did this activity accelerate the degenerative condition. I respectfully disagree with Dr. Scheller and continue to adhere to my report dated March 25, 2003."

By decision dated August 10, 2005, the Office found that appellant had not submitted evidence sufficient to warrant modification of its prior decisions.

### **LEGAL PRECEDENT**

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete

factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.<sup>2</sup> When a factor of employment aggravates, accelerates or otherwise combines with a preexisting, nonoccupational pathology, the employee is entitled to compensation.<sup>3</sup> In situations where there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist for the purpose of resolving the conflict, pursuant to section 8123(a) of the Federal Employees' Compensation Act.<sup>4</sup>

### ANALYSIS

The Office accepted that factors of appellant's employment as a letter carrier aggravated the osteoarthritis of his right hip. The Office's denial of appellant's claim for a schedule award for the right leg necessarily also denied that appellant's right total hip replacement surgery was causally related to this aggravation, as even a good result of such surgery results in a permanent impairment of the leg, according to Table 17-33 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>5</sup>

The Board finds that there is a conflict of medical opinion on the question of whether appellant's right hip replacement surgery was causally related to his employment. In an April 15, 2005 report, appellant's attending Board-certified orthopedic surgeon, Dr. Scheller, stated that the exacerbation of his osteoarthritis, which is essentially the condition accepted by the Office, "reached the point where, despite conservative measures, a total right hip replacement was warranted" and that the "right total hip replacement was necessitated by an employment-related aggravation of the osteoarthritic condition of his right hip." Dr. Scheller explained his support for causal relation by stating that the "work-related exacerbation of his condition hastened the need for the hip replacement," which he opined would not have been required for at least another decade but for his employment as a letter carrier.<sup>6</sup>

---

<sup>2</sup> *Froilan Negron Marrero*, 33 ECAB 796 (1982).

<sup>3</sup> *Kathleen M. Fava*, 49 ECAB 519 (1998).

<sup>4</sup> 5 U.S.C. § 8123(a) states in pertinent part: "If there is 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."

<sup>5</sup> By regulation, the Office has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses. 20 C.F.R. § 10.404.

<sup>6</sup> Hastening is an appropriate basis for a finding of causal relationship. *John I. Lattany*, 37 ECAB 129 (1985); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relation*, Chapter 2.805.2c (June 1995) defines, as one type of causal relationship: "Acceleration. An employment-related injury or illness may hasten the development of an underlying condition, and acceleration is said to occur when the ordinary course of the disease does not account for the speed with which a condition develops.... An acceptance for acceleration of a condition carries the same force as an acceptance for direct causation."

Dr. Levine, who reviewed the medical evidence for the Office, concluded on August 9, 2005 that appellant's predisposition to early osteoarthritis of the hip "was not affected by his work activity nor did this activity accelerate the degenerative condition." He stated that walking five hours per day five days a week has not been shown to cause osteoarthritis.

**CONCLUSION**

The Board finds that there is an unresolved conflict of medical opinion in this case. To resolve this conflict, the Office should refer appellant, a statement of accepted facts and the case record to an appropriate medical specialist for a reasoned medical opinion on the question of whether appellant's right hip replacement is causally related to the accepted aggravation of his right hip osteoarthritis. The Office should then issue an appropriate decision on appellant's entitlement to a schedule award for permanent impairment to the right leg.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 10, 2005 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision.

Issued: May 22, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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