United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant **and** **U.S. POSTAL SERVICE, POST OFFICE, Port Huron, MI, Employer**	)	**Docket No. 09-112** **Issued: July 16, 2009**

Appearances:
Steve Burt, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 14, 2008 appellant, through his representative, filed a timely appeal of the Office of Workers' Compensation Programs' decisions, dated October 31, 2007 and July 18, 2008 denying his claim of avascular necrosis. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that his avascular necrosis of both hips is causally related to his September 27, 2004 employment injuries.

Appellant, through his representative, contends that the Office improperly denied his claim for avascular necrosis as an x-ray taken four months prior to his injury did not reveal any avascular necrosis and that evidence that his medications would not cause avascular necrosis was not considered.[1]

[1] Appellant also contends that he was not given proper notification of his appeal rights.

FACTUAL HISTORY

On September 27, 2004 appellant sustained injury to his left knee when a moving flats tray caught his leg, causing him to lose his balance and fall to the floor.[2] By letter dated March 15, 2005, the Office accepted his claim for left knee strain and left knee contusion.

In an April 12, 2005 report, Dr. Gerald J. Jerry, a Board-certified orthopedic surgeon, assessed appellant with pain in the hip joint or involving pelvic region and thigh and derangement of posterior horn of medial meniscus. He diagnosed avascular necrosis of the left hip and possible starting of avascular necrosis in the right hip. Dr. Jerry indicated that he would proceed with a magnetic resonance imaging (MRI) scan of both hips for confirmation of avascular necrosis. An MRI scan taken on April 20, 2005 revealed findings compatible with bilateral avascular necrosis of the hips, left greater than right.

On April 29, 2005 Dr. Jerry noted that appellant fell on September 27, 2004 while at work which aggravated his condition of rheumatoid arthritis. He continued:

> "The pain that [appellant] felt in his right knee was actually referred from his hip. He had injury to both hips and the right knee at the time of the fall. This type of trauma will cause avascular necrosis of bilateral hips."

On May 6, 2005 Dr. Jerry performed a right hip core decompression with biopsy and left hip total hip arthoplasty reconstruction. The diagnostic radiology report from this date found mild degenerative changes seen in right hip with no evidence of fracture. The left hip demonstrated changes of total hip arthoplasty.

In a June 4, 2005 report, Dr. Jerry reiterated the diagnosis of avascular necrosis and that the condition was preexisting; however, the work-related fall on September 27, 2004 aggravated appellant's condition to the point of needing surgical correction. Dr. Jerry stated, "We feel that [appellant's] weight which is in excess of 250 [pounds] and carrying weight in excess of 40 to 50 [pounds] with mail, caused significant trauma to the area of the hips which since then the hips have become progressively symptomatic for him." He noted that appellant had rheumatoid arthritis which increased the risk to the area of the hips with decrease in blood circulation. Dr. Jerry continued appellant's weight bearing restrictions after the surgical procedure.

On July 22, 2005 the Office referred appellant to Dr. Bruce D. Abrams, a Board-certified orthopedic surgeon, for a second opinion. In a report dated August 8, 2005, Dr. Abrams diagnosed left knee contusion, status post total left hip arthoplasty and status post right hip core decompression. He noted that the work-related condition was the contusion to the left knee and the nonwork-related condition was the preexisting hip condition. Dr. Abrams opined that the knee contusion did not aggravate or precipitate appellant's secondary diagnosis of hip disease. He indicated that he would place appellant on temporary restrictions which were not related to the September 2004 injury.

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[2] Appellant was initially treated by Daniel Dillingham, a physician's assistant, for a left knee strain and mild contusion. He was returned to modified duty as of September 30, 2004.

The Office found a conflict between Dr. Jerry, appellant's physician, and Dr. Abrams, the second opinion physician, with regard to the following issues: (1) whether appellant's right hip condition was preexisting or not and how it was affected, if at all, by the accepted work incident; (2) whether claimant's right hip surgery, performed on May 7, 2005, was warranted and related to the work injury that occurred on September 27, 2004; and (3) whether appellant's requested left knee arthroscopy was medically warranted due to the work injury of September 27, 2004.

By letter dated September 8, 2005, the Office referred appellant to Dr. Joseph Salama, a Board-certified orthopedic surgeon, for an impartial medical examination. In a September 29, 2005 report, Dr. Salama listed his diagnostic impressions as: avascular necrosis, right and left femoral head; post left total hip replacement and post right core decompression; and postarthroscopic meniscectomy, left knee. He opined that appellant's avascular necrosis was a preexisting condition related to his previous medical history. Dr. Salama noted that appellant's medical history was significant for rheumatoid arthritis, lupus and Sjörgen's disease, for which he was using immunosuppressive agents, which can precipitate avascular necrosis. Upon review of appellant's medical records, the left knee injury was relatively minor, noting that appellant was released to full duty within days of the incident. Dr. Salama indicated that appellant's right hip condition was preexisting and neither caused nor aggravated by the September 27, 2004 injury. He noted that appellant underwent a left knee meniscectomy which was necessitated by the accepted injury. The pathology sustained as a result of the September 17, 2004 incident had been surgically repaired. Dr. Salama advised that appellant's predominant conditions were chronic rheumatoid arthritis and avascular necrosis. He noted that these conditions were of a chronic, preexisting nature and have no relationship to the September 27, 2004 injury, but followed their normal progression.

By decision dated April 21, 2006, the Office found that appellant's right hip decompression and left total hip arthoplasty were not work related. It denied appellant's claim for wage loss due to these surgeries for the period April 16 through October 11, 2005.

On May 16, 2006 appellant requested an oral hearing.

In a February 19, 2007 medical note, Dr. Paul T. Sommerville, an osteopath, noted that appellant has psoriatic arthritis which was treated with Methotrexate from October 2004 to March 2005. He did not believe this medicine for this short period of time would cause appellant's avascular necrosis or cause his bones to become brittle. Dr. Sommerville also noted that this medicine was not started until after he suffered the trauma to his bilateral hips and left knee.

At a hearing held on February 21, 2007, appellant advised that he retired November 30, 2005. He noted that, on September 27, 2004, he grabbed a tray of mail and when he turned, his leg caught another tray and he fell on his left knee and "everything went numb." Appellant discussed his medical treatment and subsequent work history. He indicated that Dr. Abrams never looked at him but just sat at his desk and asked questions. Appellant noted that he had psoriatic arthritis for which he took medication. He also discussed his appointment with Dr. Salama. Appellant's wife testified with regard to their finances and discussed her husband's physical limitations.

By decision dated May 9, 2007, the hearing representative found that appellant's right hip condition was not causally related to his work injury. However, she found that it was necessary to seek clarification from Dr. Salama concerning appellant's left hip.

In a June 7, 2007 addendum, Dr. Salama opined that the September 27, 2004 injury did not accelerate or aggravate appellant's preexisting avascular necrosis. He noted that appellant had previous avascular necrosis and the natural progression of the disease was with collapse over the femoral head and eventually arthritic changes in the hip requiring hip arthoplasty. Dr. Salama also noted that the cord decompression on the right side was not related to the September 27, 2004 work injury. This procedure was undertaken to promote same vascularity to the femoral head to prevent collapse on the right side.

In a decision dated September 6, 2007, the Office found that the September 27, 2004 injury did not accelerate or otherwise aggravate his preexisting left hip avascular necrosis. On the same date, it accepted torn cartilage of the left knee.

On October 16, 2007 appellant, through his representative, requested reconsideration. In an August 20, 2007 report, Dr. Rafia Khalil, a Board-certified internist with a subspecialty in rheumatology and a colleague of Dr. Jerry, noted that appellant had an undifferentiated connective tissue disease dating to the 1980's. He did not believe the diagnosis of preexisting avascular necrosis could be entertained. Dr. Khalil noted that Methotrexate was prescribed for a short time for psoriatic arthritis. Dr. Khalil stated that appellant's medications were not known to cause vascular necrosis. He opined that appellant's fall was the most likely cause for his osteonecrosis in the left hip. Dr. Khalil noted that the right hip did show mild avascular necrosis without collapse and was probably also related to the injury, noting that the disease was not as severe in his right hip because of the lack of direct impact on the right side in the September 2004 fall. He noted that there was no definite abnormality to appellant's hip prior to the injury, and that, if it were not for the fall, appellant probably would not have needed surgical treatment.

By decision dated October 31, 2007, the Office denied modification, finding that the report of Dr. Khalil was speculative on causal relationship.

On March 17, 2008 appellant again requested reconsideration and he submitted evidence already of record, medical bills and correspondence from his health insurance company. Appellant's wife, a nurse, addressed the circumstances of his injury, the medical evidence, and issues arising in the processing of his claim. In a January 28, 2008 letter, Dr. Jerry stated:

> "[Appellant] had not had pain or irritation to either his right or left [hip] prior to his fall, which was sustained at work on September 27, 2004. After the fall, on said date, [he] started his complaints of pain to both the knee and to the hips. Radiographic evidence, which supports this claim, is an x-ray, which was taken on [June 4, 2004] with the date noted being before [appellant's] fall at work. This was reviewed and showed to have absolutely no findings of avascular necrosis to the area of the left hip. The x-rays showed to have well preserved joint space, no arthritic changes and no findings of any fractures or bony lesions. With [appellant's] history of having no complaints prior to his injury, along with the

> most recent evidence of left hip x-ray showing no findings of avascular necrosis, it is an absolute fact that the injury sustained, which again was a fall at work, caused a traumatic injury to the area of the left hip, which caused his avascular necrosis. Which, to reiterate, is proved by [his] history of no pain and again by the previous x-ray which was taken prior to his fall."

By decision dated July 18, 2008, the Office denied modification of the October 31, 2007 decision.

LEGAL PRECEDENT

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[3] Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[4]

Section 8123 of the Act provides that, 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. When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[5]

ANALYSIS

The Office accepted appellant's claim for a left knee strain, left knee contusion and torn cartilage in the left knee. It denied appellant's claim for avascular necrosis of both hips. Dr. Jerry advised that the avascular necrosis was causally related to the traumatic injury of September 27, 2004. He noted that appellant's weight of over 250 pounds, in combination with the weight of the mail he was lifting, caused significant trauma to the areas of the hips when he fell. Dr. Abrams, a second opinion physician, disagreed and opined that appellant's left knee injury did not aggravate or precipitate his hip disease. In order to resolve the conflict between

[3] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[4] *John W. Montoya*, 54 ECAB 306 (2003).

[5] 5 U.S.C. § 8123.

these two physicians, the Office referred appellant to Dr. Salama for an impartial medical examination.

Dr. Salama examined appellant on September 25, 2005 and provided a thorough review of the accepted injury and medical treatment. He noted the diagnosis of rheumatoid arthritis with a history of Sjögren's disease. Dr. Salama noted that the medical evidence contemporaneous to the accepted injury did not reveal complaints relative to the hips, back or ankle. He opined that appellant's September 27, 2004 employment injury was relatively minor and did not accelerate or aggravate appellant's preexisting avascular necrosis. Dr. Salama noted that the avascular necrosis was a chronic condition and that appellant's present condition was just following the natural progression of the disease. As his opinion is well rationalized, it is entitled to special weight.[6]

The medical evidence submitted by appellant following the denial of his claim is insufficient to overcome the report of Dr. Salama. Much of the evidence is not relevant to the issue of causal relation, *i.e.,* copies of prior evidence, financial records and letters from appellant's insurance company. The reports of Dr. Jerry and Dr. Khalil were found insufficient to overcome the weight given to the report of Dr. Salama. Dr. Jerry reiterated his opinion on causal relationship which gave rise to the conflict in medical opinion.[7] The opinion of Dr. Khalil was found to be speculative.[8] Appellant argues that the x-ray taken four months before his fall did not show avascular necrosis and that his condition was not diagnosed until nine months after injury. This contention was not supported by Dr. Salama. Appellant also contends that the claims examiner summarily dismissed medical evidence in support of his claim. Dr. Salama stated that avascular necrosis is a progressive disease and the natural progression causes collapse of the femoral head over time. The evidence from appellant's physicians was considered by the Office but found deficient. The well-rationalized opinion of the impartial medical examiner found that appellant's medications, specifically the immunosuppressive agents secondary to his rheumatoid arthritis condition, can precipitate avascular necrosis. Accordingly, appellant has failed to establish that he sustained a work-related aggravation of his avascular necrosis.

CONCLUSION

The Board finds that appellant has not established that his bilateral hip avascular necrosis was caused by his accepted injury.

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[6] *Id.*

[7] *See John D. Jackson,* 55 ECAB 465 (2004).

[8] *See Michael R. Shaffer,* 55 ECAB 386 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 18, 2008 and October 31, 2007 are affirmed.

Issued: July 16, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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