

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

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**F.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Southeastern, PA, Employer**

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**Docket No. 10-474  
Issued: September 2, 2010**

*Appearances:*  
*Thomas R. Uliase, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 10, 2009 appellant, through his attorney, filed a timely appeal of a September 25, 2009 Office of Workers' Compensation Programs' merit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUE**

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on July 11, 2008.

**FACTUAL HISTORY**

On July 12, 2008 appellant, then a 48-year-old mail handler, filed a traumatic injury claim alleging that he was pushing a wire container and his left leg gave way on July 11, 2008. He alleged that he sustained a left hip injury. Appellant submitted a witness statement dated July 12, 2008 asserting that he was in a trailer pushing a wire container when his hip gave out. Patrick McCool stated that he helped appellant out of the trailer.

Dr. H. William Schaaf, a Board-certified orthopedic surgeon, completed a note on July 18, 2008 and stated that appellant had worsening left hip pain and had a setback while pushing something at work. He stated that appellant would need a total hip replacement. Dr. Schaaf diagnosed sprains and strains of the hip and thigh. He completed a form report on July 23, 2008 and stated that appellant injured his hip on July 11, 2008 while pushing a container of mail. Dr. Schaaf noted that appellant had a prior left hip injury at work on March 8, 2007. He indicated with a checkmark "yes" that appellant's condition was caused or aggravated by the employment activity and indicated that appellant required a total hip arthroplasty on the left. Dr. Schaaf performed a total left hip arthroplasty on August 14, 2008.

In a letter dated October 3, 2008, the Office requested additional medical evidence establishing a diagnosed condition resulting from the July 11, 2008 employment incident. It allowed 30 days for a response. An x-ray report dated July 12, 2008 found a chronic deformity of the left hip without significant interval change. Dr. Schaaf completed a report on October 28, 2008 and noted that appellant had long-standing osteoarthritis of the hip. He stated that appellant required injections to the hip joint after injuries caused increased pain in the hip in 2007 when he was hit by a forklift at work. Dr. Schaaf stated that appellant was doing well until July 11, 2008 when he reinjured his hip pushing a heavy object at work. Appellant developed severe debilitating left hip pain as a result. Dr. Schaaf stated, "It is my belief that the injury of July 11, 2008 worsened [appellant's] preexisting condition requiring a hip replacement."

By decision dated November 7, 2008, the Office denied appellant's claim finding that the medical evidence did not establish that the claimed medical condition resulted from the July 11, 2008 employment incident. It found that Dr. Schaaf's October 28, 2008 report did not contain the necessary medical rationale to meet appellant's burden of proof.

In a note dated April 11, 2007, Dr. Schaaf stated that appellant's hip pain had returned to baseline, that appellant walked with a limp but could work. He stated that appellant's hip was slowly worsening and that eventually appellant would need a total hip arthroplasty. Appellant underwent a left hip magnetic resonance imaging (MRI) scan on March 15, 2007, which reflected that he had degenerative joint disease at the hip with previous surgery when he was 14 years old to remove loss fragments. The MRI scan demonstrated degenerative changes at the left hip with associated femoral head enlargement and evidence of multiple loss bodies at the left hip.

Appellant, through his attorney, requested reconsideration on June 23, 2009. He submitted a report dated June 10, 2009 from Dr. Schaaf which noted that appellant had problems with his left hip beginning in childhood. Dr. Schaaf noted appellant's 2007 employment injury and the diagnosis at that time of exacerbation of hip arthritis. He stated that appellant returned to baseline and continued to work with hip discomfort until July 11, 2008. Dr. Schaaf stated that on July 11, 2008 appellant developed severe pain in the left hip and thigh as a result of pushing a heavy container of mail. He believed that appellant's July 11, 2008 employment injury would have resulted in a protracted period of pain and discomfort and that this injury was "the straw that broke the camel's back" necessitating surgery.

By decision dated September 25, 2009, the Office reviewed the merits of appellant's claim and denied modification of the November 7, 2008 decision. It stated that Dr. Schaaf did

not provide a diagnosis as a result of the July 11, 2008 incident and that his report was not sufficient to meet appellant's burden of proof.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

The Office defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."<sup>4</sup> To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup>

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.<sup>7</sup> Medical rationale 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 activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship

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<sup>1</sup> 5 U.S.C. §§ 8101-1893.

<sup>2</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> 20 C.F.R. § 10.5(ee).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *J.Z.*, 58 ECAB 529 (2007).

<sup>7</sup> *T.F.*, 58 ECAB 128 (2006).

between the diagnosed condition and specific employment activity or factors identified by the claimant.<sup>8</sup>

### ANALYSIS

Appellant filed a traumatic injury claim alleging on July 11, 2008, his left leg gave way while he was pushing a wire cart resulting in a left hip injury. In support of his claim, he submitted a series of reports from Dr. Schaaf, a Board-certified orthopedic surgeon, addressing appellant's left hip condition. In an April 11, 2007 note, Dr. Schaaf stated that appellant continued to experience hip pain and to limp but could work. He opined that appellant would eventually need a total hip arthroplasty. Following the July 11, 2008 employment incident, Dr. Schaaf completed a note on July 18, 2008 finding that appellant had a setback while pushing something at work which resulted in worsening hip pain. He again opined that appellant would need a total hip replacement and diagnosed sprains and strains of the hip and thigh. This report provides the only medical diagnosis of a condition resulting from the July 11, 2008 employment incident.

Appellant has submitted factual evidence establishing that his left hip gave way while pushing a wire cart on July 11, 2008 and that has submitted medical evidence of diagnosed conditions of sprains and strains of the that left hip and thigh. However, Dr. Schaaf did not provide any medical reasoning explaining how appellant's pushing incident could result in the diagnosed condition of sprains or strains of the left hip and thigh. Therefore, this report is not sufficient to meet appellant's burden of proof.

Dr. Schaaf completed a form report on July 23, 2008 providing a history of injury on July 11, 2008 and indicating with a checkmark "yes" that appellant's condition was caused or aggravated by the employment activity. In this report, he did not provide a current diagnosis, but instead indicated that appellant required a total hip arthroplasty on the left. This form report is not sufficient to meet appellant's burden of proof as it lacks both a clear diagnosis and medical opinion evidence supporting a causal relationship between the accepted employment incident and the recommended treatment.

Dr. Schaaf performed a total left hip arthroplasty on August 14, 2008. In a narrative report dated October 28, 2008, he stated that appellant had long-standing osteoarthritis of the hip, which he treated with hip injections after the 2007 employment injury. Dr. Schaaf opined that appellant reinjured his hip on July 11, 2008 pushing at work developing severe debilitating left hip pain as a result. He stated, "It is my belief that the injury of July 11, 2008 worsened his preexisting condition requiring a hip replacement." This report is not sufficient to meet appellant's burden of proof as Dr. Schaaf did not provide a diagnosis as a result of the July 11, 2008 injury. The Board has held that the mere diagnosis of "pain" does not constitute the basis for payment of compensation.<sup>9</sup> Without a diagnosis of appellant's employment-related condition, this report is not sufficient to meet his burden of proof. Furthermore, Dr. Schaaf did not provide any medical reasoning explaining how appellant's conditions of pain or strain/sprain

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<sup>8</sup> *A.D.*, 58 ECAB 149 (2006).

<sup>9</sup> *Robert Broome*, 55 ECAB 339 (2004).

of the hip and thigh resulted from the accepted employment incident or how these conditions could result in the need for a hip replacement.

In his June 10, 2009 narrative report, Dr. Schaaf stated appellant's 2007 employment injury resulted in a diagnosis of exacerbation of hip arthritis. He noted that appellant continued to work with hip discomfort until July 11, 2008. Dr. Schaaf stated that appellant developed severe pain in the left hip and thigh as the result of pushing a heavy container of mail on July 11, 2008. Again he failed to provide a definitive diagnosis of appellant's current condition as a result of the July 11, 2008 employment incident. As noted above, pain is not a basis for payment of compensation. Dr. Schaaf opined that appellant's July 11, 2008 employment injury would have resulted in a protracted period of pain and discomfort. He concluded that this injury was "the straw that broke the camel's back" necessitating surgery. These statements do not explain how appellant injured himself on July 11, 2008, what specific condition resulted from the July 11, 2008 employment incident, the process by which the diagnosed condition could have necessitated surgery.

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish an injury resulting from the July 11, 2008 employment incident. Furthermore, appellant has not established that any condition resulting from the July 11, 2008 employment incident resulted in the need for left hip replacement surgery.

On appeal, appellant's attorney alleged that he had submitted sufficient factual evidence to establish that the employment incident occurred as alleged. He further alleged that Dr. Schaaf established that appellant's preexisting left hip condition was aggravated by the July 11, 2008 work injury, which led to the need for hip replacement surgery or in the alternative that this report was sufficient to require additional development of the medical evidence by the Office. While the Board agrees that appellant has established that the employment incident occurred as alleged, as noted above the Board finds that Dr. Schaaf did not clearly state that appellant's preexisting left hip condition was aggravated by the July 11, 2008 incident, did not provide and support any condition as resulting from the July 11, 2008 incident and did not establish that this incident caused or contributed to appellant's need for left hip surgery.

### **CONCLUSION**

The Board finds that appellant has not submitted sufficiently detailed and well-reasoned medical evidence to meet his burden of proof in establishing that he sustained an injury in the performance of duty on July 11, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 25, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 2, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board