

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

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**J.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Port Huron, MI, Employer**

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**Docket No. 11-6  
Issued: August 12, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On September 29, 2010 appellant filed a timely appeal of the July 2, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for avascular necrosis. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the 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.

On appeal, appellant contends that the medical evidence established that his avascular necrosis was causally related to his September 27, 2004 employment injuries. He argues that OWCP erroneously gave weight to the impartial medical examiner over the opinions of other physicians. Appellant also submitted articles that he contends support his case.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board. By decision dated July 16, 2009, this Board affirmed OWCP's October 31, 2007 and July 18, 2008 finding that appellant did not establish that his bilateral hip avascular necrosis was causally related to his September 27, 2004 employment injury.<sup>2</sup> The facts of the case as set forth in the prior decision and order are incorporated herein by reference.

On September 27, 2004 appellant, then a 56-year-old letter carrier, 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. OWCP accepted his claim for left knee strain, left knee contusion and torn cartilage of the left knee. Dr Gerald J. Jerry, a treating Board-certified orthopedic surgeon, opined that, although appellant's avascular necrosis preexisted his injury, the work-related fall on September 27, 2004 aggravated his condition to the point of needing surgical correction. On July 22, 2005 Dr. Bruce D. Abrams, a Board-certified orthopedic surgeon to whom OWCP referred appellant for a second opinion, advised that his work-related condition was a contusion to the left knee. He opined that appellant's knee contusion did not aggravate or precipitate the secondary diagnosis of hip disease. In order to resolve the conflict in medical opinion between Dr. Jerry and Dr. Abrams, OWCP referred appellant to Dr. Joseph Salama, a Board-certified orthopedic surgeon, for an impartial medical examination. In an opinion dated September 29, 2005, Dr. Salama concluded that appellant's right hip condition was preexisting and neither was caused nor aggravated by the September 27, 2004 employment injury. In an addendum dated June 7, 2007, he clarified that appellant had previous avascular necrosis and that the natural progression of the disease was not related to his September 27, 2004 work injury. Appellant submitted further reports, including an August 20, 2007 report by Dr. Rafia Khalil, a Board-certified internist with a subspeciality in rheumatology and a colleague of Dr. Jerry. Dr. Khalil did not believe that the diagnosis of preexisting avascular necrosis could be entertained and opined that the right hip did show mild avascular necrosis without collapse and that this was probably related to appellant's injury. Appellant also submitted further reports by Dr. Jerry wherein he opined that appellant's fall caused a traumatic injury to the area of his left hip, which caused his avascular neurosis.

By decision dated July 16, 2009, the Board found that the weight of the medical opinion rested with the well-rationalized opinion of Dr. Salama, the impartial medical examiner.

On March 26, 2010 appellant requested reconsideration.

In a February 2, 2010 report, Dr. William N. Grant, a Board-certified internist, obtained a history that on September 27, 2004 appellant tripped over a tray of mail and fell on his left knee. He noted that appellant had severe bilateral hip and left knee pain and, prior to the accident, never had left knee or hip discomfort. Dr. Grant concluded that "it is more likely than not that the avascular necrosis of the left hip and degenerative disease in his right hip were secondary to the accident that occurred on [September 27, 2004]." He stated that it was well documented in the literature that avascular necrosis can be secondary to trauma event. In a second report of the

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<sup>2</sup> J.G., Docket No. 09-112 (issued July 16, 2009).

same date, Dr. Grant opined that appellant had a 28 percent impairment of his left lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2009).

In a May 6, 2010 opinion, Dr. Nabil F. Angley, a Board-certified orthopedic surgeon, advised that he could not provide an impairment rating.

By decision dated July 2, 2010, OWCP reviewed appellant's claim on the merits but denied modification of its prior decisions finding that he had not established that the avascular necrosis of both hips was causally related to the September 27, 2004 employment injury.

### **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.<sup>3</sup> An award of compensation may not be based on appellant's belief of causal relationship.<sup>4</sup> Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence that includes a physician's rationalized opinion on whether there is a causal relation is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized medical opinion in 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 appellant, 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.<sup>5</sup>

Section 8123(a) of FECA 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.<sup>6</sup> When the case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical evidence, the opinion of such specialist will be given special weight when based on a proper factual and medical background and sufficiently well rationalized on the issue presented.<sup>7</sup>

### **ANALYSIS**

The Board had previously reviewed this case and affirmed OWCP's determination that appellant had not established that his avascular necrosis to both hips was causally related to his

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<sup>3</sup> *T.W.*, Docket No. 10-1799 (issued March 21, 2011).

<sup>4</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>5</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>6</sup> 5 U.S.C. § 8123(a). See *Elsie L. Price*, 54 ECAB 734 (2003); *Raymond J. Brown*, 52 ECAB 192 (2001).

<sup>7</sup> See *Bernadine P. Taylor*, 54 ECAB 342 (2003); *Anna M. Delaney*, 53 ECAB 384 (2002).

September 27, 2004 employment injuries. The Board found that the special weight of the medical evidence rested with the opinion of Dr. Salama, the impartial medical examiner, who opined that appellant's hip condition was preexisting and not caused or aggravated by accepted employment incident. The Board finds that the additional evidence submitted does not change its conclusion. As stated in our prior decision, the well-rationalized opinion of Dr. Salama is entitled to special weight.

In assessing the medical evidence, the number of physicians supporting one position or another is not controlling. The weight of such evidence is determined by its reliability, its probative value and its convincing quality.<sup>8</sup> The February 2, 2010 opinion by Dr. Grant, wherein he concluded that it was "more likely than not" that appellant's avascular necrosis of the left hip and degenerative disease in his right hip were secondary to the accident that occurred on September 27, 2004, is not sufficient to establish a causal relationship. Initially, the Board notes that his opinion is not well rationalized. Dr. Grant does not provide any medical explanation in support of his conclusion. Furthermore, his notation that "it is more likely than not that the avascular necrosis of the left hip and degenerative disease" were related to appellant's injury and his statement that medical literature indicates that avascular necrosis "can be secondary to a trauma event" was couched in speculative terms and therefore lacked the necessary reasonable medical certainty.<sup>9</sup> Accordingly, Dr. Grant's opinion is not sufficient to overcome the weight given to the well-rationalized opinion of the impartial medical specialist, Dr. Salma.

The Board finds that the remaining evidence is also insufficient to establish causal relationship. The opinions of Dr. Angley and Dr. Grant with regards to appellant's impairment are not relevant to the issue of whether he suffered from avascular necrosis of both hips causally related to his September 27, 2004 employment injuries.<sup>10</sup> Finally, the Board notes that excerpts from medical journals and other publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.<sup>11</sup> Accordingly, appellant has failed to establish that he sustained a work-related aggravation of his avascular necrosis.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that his avascular necrosis of both hips is causally related to his September 27, 2004 employment injury.

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<sup>8</sup> *T.S.*, Docket No 09-1245 (issued May 24, 2010).

<sup>9</sup> *Kathy A. Kelley*, 55 ECAB 205 (2004).

<sup>10</sup> The Board also notes that appellant submitted additional evidence on appeal. However, the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

<sup>11</sup> *William C. Bush*, 40 ECAB 1064, 1075 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 2, 2010 is affirmed.

Issued: August 12, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board