United States Department of Labor
Employees' Compensation Appeals Board

K.R., Appellant	)	
and	)	**Docket No. 11-391**
	)	**Issued: December 21, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Beltsville, MD, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 7, 2010 appellant, through his attorney, filed a timely appeal from a November 9, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) that denied his claim for a consequential injury to his left hip. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 sustained a consequential injury to his left hip causally related to his accepted right hip injury, requiring surgical intervention.

On appeal appellant, through counsel, contends that OWCP's decision is contrary to fact and law.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 3, 1999 appellant, then a 39-year-old letter carrier, filed an occupational disease claim alleging that as a result of constant standing, bending, twisting, lifting, pivoting, walking and step climbing he developed progressive deterioration of his right hip. He walked with a constant limp with his right leg and his right hip pain was unbearable at the end of the workday. Appellant listed the nature of disease or illness as progressive degenerative joint disease in the right hip. On October 20, 1999 OWCP accepted his claim for temporary aggravation of degenerative joint disease of the right hip. It subsequently accepted joint disease in appellant's right hip and authorized right hip replacement. On November 2, 2001 appellant returned to work with the employing establishment on part-time limited duty.

By decision dated April 23, 2002, OWCP determined that his actual earnings fairly and reasonably represented his wage-earning capacity and reduced appellant's wage-loss compensation accordingly.

Medical reports from 2002 to 2006 advised that appellant continued to have complaints of pain and weakness in his right hip, but was functioning well with light duty employment. In a report dated June 28, 2007, Dr. Stephen T. Michaels, a treating Board-certified orthopedic surgeon, noted that appellant continued to have weakness in the quadriceps mechanism in his right lower extremity and was walking with a limp that was more pronounced than on the prior visit. Appellant also reported pain in the left greater trochanteric region extending towards the groin area. In a January 15, 2008 report, Dr. Michaels noted that appellant continued to complain of bilateral hip pain. Appellant had significant tenderness in the right hip with decreased internal and external rotation in the left hip. Dr. Michaels stated that x-rays showed early signs of hip disease in the left side. He opined that these findings were related to his continuing efforts at work, including standing for long periods of time and also the altered gait. Dr. Michaels also noted that appellant was complaining of intermittent lower back pain. He did not believe that appellant's hip replacement was responsible for his symptoms and recommended a magnetic resonance imaging (MRI) scan of the lumbosacral spine. In a June 10, 2008 report, justifying the request for an MRI scan, Dr. Michaels stated that in April 2008 he grew concerned that appellant may have developed a problem in his lumbar spine as a result of his continuous right hip problems. He noted that appellant's gait problems had been ongoing for many years and the lumbar spine condition was related to the original right hip problem.

In a July 31, 2008 report, Dr. Michaels reiterated that appellant had persistent pain in his hips and that his left side was now worse than his right. He noted that x-rays revealed degenerative disease in appellant's left hip. In a September 25, 2008 report, Dr. Michaels noted that appellant had persistent pain in his left hip with decreased range of motion and that he would need a total left hip replacement. In an October 30, 2008 report, he stated that appellant's lumbar spine MRI scan showed degenerative disc disease at L3-4, L5 and L-S1. Dr. Michaels opined that appellant's continuing work activities caused a degenerative process in his left hip much like it did on the right side. In a March 31, 2009 report, he reiterated that appellant's symptoms were related to degenerative joint disease in his left hip, which was a work-related injury and that he would need a total hip replacement. In a June 4, 2009 report, Dr. Michaels opined within a reasonable degree of medical certainty that appellant's left hip condition was directly related to his work activities.

In an August 13, 2009 report, OWCP's medical adviser reviewed the medical evidence and stated that appellant's work injury was limited to osteochondritis of the right hip. Appellant's degenerative joint disease of his left hip was not employment related and OWCP should deny his request for a left total knee replacement.

In an August 20, 2009 report, Dr. Michaels stated that appellant reported severe continuing complaints of pain in his left hip. He noted that appellant had been his patient since 1998, with no severe trauma to the right hip but his work involved constant walking, standing, bending and squatting. Dr. Michaels noted that appellant developed premature osteoarthritis of his right hip and underwent a right total hip replacement. He opined that within a reasonable degree of medical certainty appellant's premature osteoarthritis of his left hip was directly related to his chronic work activities. Dr. Michaels noted that appellant was using a cane to help with ambulation.

On November 6, 2009 OWCP referred appellant to Dr. Robert Smith, a Board-certified orthopedic surgeon, for a second opinion. In a November 20, 2009 report, Dr. Smith found that there was no evidence of an aggravation of appellant's left hip in relation to his work activities. He stated that, although appellant would benefit from a left total hip replacement, this procedure was not related to his federal employment but related to a preexisting degeneration condition that was neither caused, aggravated, accelerated or precipitated by work.

OWCP found a conflict of medical opinion between Dr. Michaels and Dr. Smith. On February 4, 2010 it referred appellant to Dr. Olumuyiwa A. Paul, a Board-certified orthopedic surgeon, for an impartial medical examination

In a March 2, 2010 report, Dr. Paul concluded that, although appellant would certainly benefit from a left total hip arthroplasty, his left hip arthritis was idiopathic and not related to his work environment or employment-related injury. He found it noteworthy that images of the left hip performed in July 2000 revealed no significant degenerative changes of the left hip and that subsequent imaging studies revealed progressive degeneration of the hip in the period of time during which appellant worked in an essentially sedentary position for four hours a day. Dr. Paul found that appellant's work did not cause such progressive degeneration of his left hip. He further noted that review of appellant's medical records by his treating physician revealed that his first documented complaints of left hip pain occurred on June 28, 2007, seven years after he had been placed on a permanent light-work duty status.

In an April 7, 2010 report, Dr. Christopher Magee, a Board-certified orthopedic surgeon and a colleague of Dr. Michaels, indicated that x-rays of appellant's left hip showed severe osteoarthritic changes with obliteration of the left hip joint. He diagnosed post-traumatic osteoarthritis of the left hip. Dr. Michaels opined that a left total hip replacement was necessary and reiterated that it was related to appellant's work activities of over 20 years as a mail carrier.

By decision dated April 22, 2010, OWCP denied appellant's request for a total left hip replacement and claim for a consequential left hip condition.

On May 20, 2010 appellant, through counsel, requested a telephonic hearing before OWCP's hearing representative.

At the hearing held on September 1, 2010, appellant testified that he was still working for the employing establishment four hours a day with restrictions. He noted that his restrictions were based on his right hip surgery which he underwent on November 12, 1999. Appellant noted that at that time he was a mail carrier for approximately 18 years and described his duties. He noted that, after his hip surgery, he was out of work for approximately three months and then returned to work in a light-duty capacity. Appellant noted that when he came back to work he edited sheets, worked on cases, put addresses in case for letter carriers and did boxed mail. He noted that, at the time he started this work, it did not produce any stress on his left hip, but that he began to notice increased symptoms in his left hip and that he had not had any trauma to the hip. Appellant testified that he was only in Dr. Paul's office for 10 minutes.

In a decision dated November 9, 2010, OWCP's hearing representative affirmed the April 22, 2010 OWCP decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] 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.[3]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which 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 factors. The opinion of the physician 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 specific employment factors identified by the claimant.[4]

[2] *J.M.*, Docket No. 10-2003 (issued June 1, 2011).

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause.[5] The subsequent injury is compensable if it is the direct and natural result of the compensable primary injury. With respect to consequential injuries, the Board has noted that where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even if nonemployment related, is deemed, because of the chain of causation, to arise out of and in the course of employment and is compensable.[6]

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 an examination.[7] 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.[8]

Section 8103 (a) of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.[9] While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[10]

ANALYSIS

OWCP accepted that appellant sustained joint disease in his right hip and accepted the right hip replacement as related to his employment. It rejected his claim for a consequential injury to his left hip and attendant surgery based on the report of Dr. Paul.

Appellant's treating Board-certified orthopedic surgeons found that he had a consequential injury to his left hip. Dr. Michaels treated appellant for his left and right hip conditions which he related to his work duties as a letter carrier. He noted bilateral hip pain and

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *Kathy A. Kelley*, 55 ECAB 206 (2004). A claimant bears the burden of proof to establish a claim for a consequential injury. *C.S.*, Docket No. 10-214 (issued October 5, 2010); *J.J.*, Docket No. 09-27 (issued February 10, 2009).

[7] 5 U.S.C. § 8123(a).

[8] *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002); *M.C.*, Docket No. 10-2242 (issued July 7, 2011).

[9] 5 U.S.C. § 8103.

[10] *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004); *P.P.*, Docket No. 11-111 (issued August 18, 2011).

made numerous references to appellant's altered gait. Dr. Michaels's colleague, Dr. Magee, agreed in his April 7, 2010 report. Both physicians also agreed that left hip replacement was warranted. OWCP's medical adviser and the second opinion physician, Dr. Smith, disagreed, and found that appellant's left hip condition was not related to his work activities but due to the progression of underlying degenerative disease. The Board finds that OWCP properly referred appellant's case to Dr. Paul for an impartial medical examination to resolve the conflict. The opinion of the impartial medical examiner, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[11]

The Board finds that the special weight of the evidence rests with the well-rationalized opinion of Dr. Paul, the impartial medical examiner, who agreed that appellant would benefit from a left total hip arthroplasty, he found that appellant's left hip condition and recommended surgery were not causally related to his work environment or his employment-related injury. Dr. Paul explained that images of appellant's left hip performed in July 2000 revealed no significant degenerative changes and that subsequent imaging studies revealed progressive degeneration of the hip after a period of time during which he was working in an essentially sedentary position for only four hours a day. He opined that exposure to this work environment could not have resulted in such progressive degeneration of the left hip. Dr. Paul further opined that appellant's treating physician revealed that appellant's first documented complaints of left hip pain occurred on June 28, 2007, seven years after he had been placed on light-duty work status.

Accordingly, the Board finds that appellant did not meet his burden of proof for establishing that he sustained a consequential left hip injury due to his accepted right hip injury and not due to a nonemployment-related condition.

CONCLUSION

The Board finds that appellant has not established that he sustained a consequential injury to his left hip causally related to his accepted right hip injury, requiring surgical intervention.

[11] *M.C., supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 9, 2010 is affirmed.

Issued: December 21, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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