



beginning 2010. Appellant attributed his condition to walking, climbing stairs and entering and exiting a truck in the performance of his work duties over 22 years.

In a note dated July 18, 2010, Dr. Robert S. Mathieu, a Board-certified internist, diagnosed hip pain and found that appellant should not work beginning July 19, 2010.

By letter dated July 28, 2010, OWCP requested additional factual and medical information, including a detailed report from appellant's attending physician explaining whether factors of his federal employment caused a diagnosed condition.

In a report dated August 17, 2010, Dr. Gary Ferguson, an orthopedic surgeon, discussed appellant's complaints of bilateral hip pain increasing in severity over the past several years. He stated, "[Appellant] drives a heavy truck in a mill service job that includes delivery of [employing establishment] mail on foot for about two to three miles of walking per day. Overall his disability is severe because of this, and he is now one month out of work because of this pain." Dr. Ferguson listed findings on examination and reviewed x-rays of the hips and pelvis. He diagnosed disabling bilateral advanced osteoarthritis. Dr. Ferguson stated, "It was explained that this is a preexisting condition which has developed in an acquired fashion over many years of time. While it is true that [appellant's] current job situation has aggravated the condition, that same job is not thought to have actually caused the condition."

In a letter dated August 21, 2010, appellant described his work duties and related that two years ago his route was lengthened and his package delivery substantially increased. At that time he began experiencing "aches [and] pains that are consistent with my present condition." Appellant had increased pain and stiffness after a workday.

By decision dated September 8, 2010, OWCP denied appellant's occupational disease claim. It found that he did not submit sufficient medical evidence to establish that he sustained bilateral hip osteoarthritis due to the accepted work factors.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of establishing 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 filed within the applicable time limitation; that an injury was sustained while 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.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

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

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *See Ellen L. Noble*, 55 ECAB 530 (2004).

presence or existence of the disease or condition for which compensation is claimed;<sup>5</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>6</sup> and (3) medical evidence establishing 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.<sup>7</sup>

Where a claimant has a preexisting condition which is not disabling, but which becomes disabling because of aggravation causally related to the employment, then regardless of the degree of such aggravation, the resulting disability is compensable.<sup>8</sup> It is not necessary to prove a significant contribution of factors of employment to a condition for the purpose of establishing causal relationship. If the medical evidence reveals that an employment factor contributes in any way to the employee's condition, such condition would be considered employment related for purposes of compensation under FECA.<sup>9</sup>

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.<sup>10</sup> The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.<sup>11</sup>

### ANALYSIS

Appellant alleged that he sustained bilateral hip arthritis due to walking, climbing stairs and getting in and out of a truck in the course of his federal employment. OWCP accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

On August 17, 2010 Dr. Ferguson evaluated appellant for increasing pain in both hips. He diagnosed bilateral advanced osteoarthritis of the hips. Dr. Ferguson discussed appellant's work duties of delivering mail and driving a heavy truck. He attributed the bilateral hip osteoarthritis to a preexisting condition and found that the condition was not caused by his employment. Dr. Ferguson determined, however, that appellant's employment aggravated his osteoarthritis.

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<sup>5</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>6</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>7</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>8</sup> *See L.R.*, 58 ECAB 369 (2007); *Roger W. Griffith*, 51 ECAB 491 (2000) (any contribution of employment factors is sufficient to establish the element of causal relationship).

<sup>9</sup> *See Arnold Gustafson*, 41 ECAB 131 (1989).

<sup>10</sup> *Jimmy A. Hammons*, 51 ECAB 219 (1999).

<sup>11</sup> 20 C.F.R. § 10.121.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>12</sup> Dr. Ferguson provided a clear opinion that appellant's work duties aggravated his bilateral hip arthritis. He based his diagnosis of bilateral hip arthritis on x-rays studies and demonstrated a thorough knowledge of appellant's work duties. Dr. Ferguson's opinion that employment factors aggravated the bilateral hip arthritis generally supported appellant's claim. It is unequivocal, bolstered by objective findings and based on a firm diagnosis and an accurate work history. Dr. Ferguson's opinion lacks only an explanation of how the accepted work factors caused the aggravation. As discussed, causal relationship does not denote a single and exclusive causative factor. Where a person has a preexisting condition which is not disabling but which becomes disabling because of aggravation causally related to the employment, then regardless of the degree of such aggravation, the resulting disability is compensable.<sup>13</sup> Consequently, while the medical evidence from Dr. Ferguson is insufficiently rationalized to meet appellant's burden of proof, it raises an undisputed inference of causal relationship sufficient to require further development by OWCP.<sup>14</sup> Accordingly, the Board will remand the case to the Office. On remand, OWCP should further develop the medical record to determine whether appellant sustained an employment-related aggravation of bilateral hip arthritis. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

### CONCLUSION

The Board finds that the case is not in posture for decision.

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<sup>12</sup> See *A.A.*, 59 ECAB 726 (2008); *Phillip L. Barnes*, 55 ECAB 426 (2004).

<sup>13</sup> When employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation. See *Chris Wells*, 52 ECAB 445 (2001).

<sup>14</sup> See *supra* note 12.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 8, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 18, 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