

FACTUAL HISTORY

On February 10, 2009 appellant, then 46-year-old heavy mobile equipment mechanic, filed a traumatic injury claim (Form CA-1) for a left hip injury sustained on February 5, 2009 when he stepped down from an M-88 tank retriever. The employing establishment confirmed appellant's account of events.

In February 9, 2009 reports, Dr. Ting Tai, an employing establishment physician, noted appellant's complaint of severe left hip pain beginning on February 5, 2009 when climbing down from an M-88 tank vehicle. On examination, he had limited abduction of the left leg and was unable to squat. Dr. Tai restricted appellant to light duty.

In a February 9, 2009 report, Dr. Duane Tippetts, an attending Board-certified orthopedic surgeon, related the onset of appellant's left hip symptoms when he "stepped off a tank at work." He noted that appellant did not smoke, drink alcohol and had not taken any steroids. Dr. Tippetts obtained x-rays showing flattening of the femoral head and narrowing of the articular surface. He diagnosed early arthritis of the left hip, exacerbated by work activities, with possible developing avascular necrosis. Dr. Tippetts limited appellant to light duty.

In February 12 and 26, 2009 reports, Dr. Tippetts diagnosed early avascular necrosis of the left hip by magnetic resonance imaging (MRI) scan² attributable to stepping off a tank at work on February 5, 2009. He noted that appellant had no risk factors for avascular necrosis other than the February 5, 2009 trauma and that there were no concurrent or preexisting injuries. On April 23, 2009 Dr. Tippetts recommended a total left hip arthroplasty.³

On May 13, 2009 OWCP advised appellant of the additional factual and medical evidence needed to establish his claim, including medical evidence supporting a causal relationship between the February 5, 2009 incident and the claimed left hip injury. In a May 26, 2009 report, Dr. Tippetts diagnosed post-traumatic avascular necrosis of the left hip, caused by "jumping down off the vehicle at work." He explained that appellant had no other risk factors for avascular necrosis, such as drinking alcohol, steroid treatment and deep sea diving. Appellant also provided factual statements from himself, his spouse and his work group leader confirming the February 5, 2009 incident.

By decision dated June 16, 2009, OWCP denied the claim on the grounds that fact of injury was not established. It accepted that the February 5, 2009 incident occurred at the time, place and in the manner alleged. However, Dr. Tippetts' reports were insufficiently rationalized to establish a causal relationship between that incident and avascular necrosis of the left hip.

² A February 10, 2009 MRI scan of the left hip showed a serpiginous line in the anterior and superior aspects of the left femoral head and neck, bone marrow edema, joint effusion, edema of the left acetabulum and irregularity of the superior femoral head.

³ In a June 1, 2009 report, OWCP's medical adviser stated that, while arthroplasty was appropriate for avascular necrosis, the surgery request should not be approved because OWCP had not accepted avascular necrosis as work related.

In a July 8, 2009 letter, appellant requested an oral hearing, held October 8, 2009. At the hearing, he noted that he underwent total left hip arthroplasty on July 30, 2009. An OWCP hearing representative left the record open for 30 days to allow appellant to submit additional evidence. Appellant did not submit additional evidence following the hearing.

By decision dated November 16, 2010, OWCP's hearing representative affirmed OWCP's June 16, 2009 decision, finding that appellant did not submit sufficient evidence to substantiate that he sustained an injury on February 5, 2009. The hearing representative found that he did not submit sufficient medical rationale explaining "how the diagnosed condition is related to the February 5, 2009 incident."

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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.⁵ 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.⁶

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

The medical evidence required to establish causal relationship is generally rationalized medical opinion 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 medial certainty and must be supported by medical rationale

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ *Deborah L. Beatty*, 54 ECAB 340 (2003).

explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

ANALYSIS

Appellant claimed that, on February 5, 2009, he sustained a left hip injury with avascular necrosis when he alighted from an M-88 tank retriever vehicle, landing hard on his left leg. His work leader and Dr. Tai, an employing establishment physician, both corroborated appellant's account of events. OWCP accepted the February 5, 2009 incident as factual, but denied the claim on the grounds that the medical evidence was insufficient to establish causal relationship.

Dr. Tippetts, an attending Board-certified orthopedic surgeon, submitted reports from February 9 to April 23, 2009 providing a history of the accepted February 5, 2009 incident. He diagnosed avascular necrosis of the left hip as demonstrated by an MRI scan. Dr. Tippetts attributed the condition to stepping off the tank on February 5, 2009, noting that appellant had no other risk factors for avascular necrosis, including alcohol use, steroid treatment or deep sea diving.

The Board finds that while Dr. Tippetts' opinion attributing avascular necrosis of the left hip to the accepted February 5, 2009 incident is not sufficiently rationalized¹⁰ to meet appellant's burden of proof in establishing his claim, it stands uncontroverted in the record and is sufficient to require further development of the medical evidence.¹¹ OWCP did not undertake further development of the medical record, such as referring the record to an OWCP medical adviser or referring appellant for a second opinion examination on the issue of causal relationship.

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 in the development of the evidence. It has the obligation to see that justice is done.¹² The case will be remanded to OWCP for preparation of a statement of accepted facts and referral of the matter to an appropriate medical specialist, consistent with OWCP's procedures, to determine whether appellant sustained a left hip injury as a result of the February 5, 2009 incident. Following this and any other development deemed necessary, OWCP shall issue an appropriate decision in the case.

On appeal, counsel asserts that OWCP's November 16, 2010 decision is "contrary to fact and law." As stated, the case will be remanded to OWCP for further development of the medical evidence and issuance of an appropriate decision.

⁹ *Solomon Polen*, 51 ECAB 341 (2000).

¹⁰ *Frank D. Haislah*, 52 ECAB 457 (2001); *see Jimmie H. Duckett*, 52 ECAB 332 (2001); (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹¹ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

¹² *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

CONCLUSION

The Board finds that the case is not in posture for a decision. The case will be remanded to OWCP for further development of the medical evidence, to be followed by issuance of an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 16, 2010 is set aside and the case remanded for further development consistent with this decision and order.

Issued: October 17, 2011
Washington, DC

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

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

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