

FACTUAL HISTORY

This case has previously been before the Board. On October 7, 2011 the Board set aside OWCP's August 4, 2010 nonmerit decision denying appellant's June 23, 2010 request for reconsideration. The Board directed OWCP to conduct a merit review and issue an appropriate decision in response to this request.² Facts germane to the present appeal are set forth.

On January 27, 2004 appellant, then a 57-year-old logistics management specialist, slipped and fell on ice while in the performance of duty. OWCP accepted her traumatic injury claim for back, face, scalp and neck contusions.³

On September 15, 2006 appellant filed an occupational disease claim alleging that she sustained severe left hip joint pain as a result of her temporary job assignment in Germany at Rhein-Main Air Base for the period April 27 to June 9, 2005. Her duties included sedentary computer work, lifting and frequent uses of a manual transmission vehicle for at least eight hours a shift. Appellant also routinely climbed five flights of stairs to her lodging facility. In July 2005, following her return from overseas, she was advised by her employer to obtain medical treatment at its occupational health center and subsequently referred to physical therapy. Appellant noted that the physical therapy technician performed a maneuver "applying downward pressure on my left hip and leg while I was lying on a table with my right leg resting on his shoulder" on multiple occasions. By September 18, 2005 she was unable to walk without a cane due to pain.⁴ Appellant underwent left hip replacement surgery on December 28, 2006.

In a December 5, 2005 report, Dr. Suzanne T. Croteau, an osteopath specializing in family medicine, related that appellant experienced left hip pain stemming from the January 27, 2004 injury. Appellant's symptoms worsened while she was stationed in Germany in mid-2005 due to prolonged sitting and repetitive use of her left leg to operate the clutch pedal of a manual transmission vehicle. November 8, 2004 x-rays showed minimal left hip socket joint space narrowing, while September 21, 2005 x-rays later demonstrated severe degenerative left hip joint disease. A magnetic resonance imaging (MRI) scan obtained on October 6, 2005 exhibited a large area of signal intensity in the left femoral head with acetabular rim irregularity and subchondral cystic change. Citing the absence of any preexisting injuries, Dr. Croteau diagnosed post-traumatic erosive osteoarthritis of the left hip secondary to the January 27, 2004 fall. She added that the condition was exacerbated by appellant's job duties in Germany and continued to deteriorate based on the radiological evidence.

By decision dated February 1, 2008, OWCP denied appellant's occupational disease claim, finding the evidence insufficient to establish that her left hip osteoarthritis was causally

² Docket No. 11-842 (issued October 7, 2011). The findings contained in the Board's prior decision are incorporated by reference.

³ OWCP File No. xxxxxx160. This is designated as the master file.

⁴ OWCP File No. xxxxxx470. On September 9, 2008 appellant filed a second occupational disease claim. She alleged that her left hip joint symptoms were exacerbated by the "manual hip extractions" administered during five sessions of physical therapy in and around September 2005. OWCP merged both occupational disease claims.

related to work factors in Germany.⁵ On August 18, 2008 OWCP's hearing representative affirmed the denial, but determined that a formal decision was required as to whether a left hip condition was causally related to the accepted January 27, 2004 fall at work. She ordered OWCP on remand to consolidate appellant's claims,⁶ conduct further development as needed and issue a decision.

OWCP referred appellant for a second opinion examination to Dr. Pietro Seni, a Board-certified orthopedic surgeon. In a May 13, 2009 report, Dr. Seni reviewed the medical record, pointed out that previous November 2004 x-rays exhibited signs of severe degenerative left hip osteoarthritis and concluded that appellant had a preexisting condition. He opined that the January 27, 2004 injury caused a temporary aggravation of a preexisting arthritic condition because the fall "is not considered a severe trauma as to have produced any irreversible permanent changes on the anatomical structure of the left hip." Dr. Seni diagnosed nonindustrial left femoroacetabular impingement, to which he attributed the progression of appellant's osteoarthritis and her eventual hip replacement surgery. He remarked that stair climbing in Germany "produced an exacerbation of a preexisting condition."⁷

By decision dated December 15, 2009, OWCP expanded appellant's claim to include temporary aggravation of preexisting left hip osteoarthritis.⁸ OWCP's hearing representative affirmed this decision on April 27, 2010.

Appellant requested reconsideration on June 23, 2010 and submitted new evidence. In an August 15, 2011 report, Dr. Croteau specified that she diagnosed left piriformis and hip strains based on a June 15, 2004 examination. She reiterated that November 8, 2004 x-rays showed minimal left hip socket joint space, while September 21, 2005 x-rays and the October 6, 2005 MRI scan, obtained after appellant returned from Germany, confirmed complete loss of joint space and erosive osteoarthritis of the left femoral head. Dr. Croteau opined that the January 27, 2004 fall caused an injury to the left hip and piriformis muscle, prolonged driving in Germany inflamed the piriformis muscle and work factors contributed to the development of erosive osteoarthritis. She explained that joint trauma sustained on January 27, 2004 was significantly aggravated by repetitive weight-bearing activities in Germany, catalyzing the progression of osteoarthritis.⁹ In addition, Dr. Croteau noted that driving strained the piriformis muscle because the left lower extremity was placed in an externally-rotated position for extended periods. She contended that Dr. Seni misinterpreted the November 8, 2004 x-rays because they did not substantiate severe degenerative left hip osteoarthritis. Dr. Croteau also disagreed with his opinion that appellant had preexisting left hip osteoarthritis, remarking that "as her primary

⁵ The claim was originally denied the claim on December 28, 2006. On October 4, 2007 OWCP's hearing representative set aside this decision and remanded the case for further development.

⁶ See *supra* notes 3 and 4.

⁷ Dr. Seni indicated that appellant was unwilling to undergo a physical examination and brought five or six binders of medical documents for him to inspect.

⁸ OWCP did not authorize bilateral hip replacements.

⁹ Dr. Croteau also attributed appellant's arthritic condition to her subsequent physical therapy sessions. See *supra* note 4.

physician, I can state that there is no historical or medical evidence of her having osteoarthritis or any hip complaint before then.”

On February 13, 2012 OWCP denied modification of the April 27, 2010 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.¹⁰ 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.¹¹

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.¹² To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.¹³

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician’s 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, 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.¹⁴

ANALYSIS

The Board finds that the case is not in posture for decision due to a conflict in medical opinion necessitating a referral to an impartial medical specialist.

¹⁰ *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹¹ *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² *See S.P.*, 59 ECAB 184, 188 (2007).

¹³ *See R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

¹⁴ *I.J.*, 59 ECAB 408 (2008); *Woodhams*, *supra* note 11.

In a May 13, 2009 report, Dr. Seni diagnosed appellant with preexisting left hip osteoarthritis on the basis of November 2004 x-rays. He opined that her fall on January 27, 2004 temporarily aggravated this condition because the trauma sustained was insufficient to produce permanent and irreversible anatomical changes. Dr. Seni added that nonindustrial left femoroacetabular impingement and stair climbing in Germany aggravated the hip. On the other hand, Dr. Croteau detailed in an August 15, 2011 report that appellant sustained left hip and piriformis muscle injuries as a result of the January 27, 2004 fall and that job-related weight-bearing activities and driving in Germany precipitated osteoarthritis and inflamed the piriformis muscle. She maintained that appellant did not have a prior history of left hip osteoarthritis before the January 27, 2004 injury, noting that November 8, 2004 x-rays showed minimal left hip socket joint space that was not suggestive of a severe arthritic condition. By contrast, September 21, 2005 x-rays and the October 6, 2005 MRI scan, which were obtained after appellant returned from abroad, subsequently exhibited complete loss of joint space and erosive osteoarthritis of the left femoral head.

The Board finds that a conflict in medical opinion exists between Drs. Croteau and Seni. Although both physicians support that appellant sustained a left hip condition in the performance of duty, they differ regarding the proper diagnosis and the specific work activity that caused or contributed to the condition. Where there is a conflict in medical opinion between the employee's physician and the physician making the examination for the United States, OWCP shall appoint a third physician, known as a referee physician or impartial medical specialist, to make what is called a referee examination.¹⁵ To resolve the present matter, OWCP shall remand the case and refer appellant, together with the medical evidence of record and an updated statement of accepted facts, to an appropriate Board-certified specialist for a referee examination. The specialist shall provide a well-rationalized medical report that establishes both the proper diagnosis of appellant's left hip injury and its causal relationship to a particular aspect of her federal employment. After conducting such further development as deemed necessary, OWCP shall render an appropriate decision.¹⁶

CONCLUSION

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

¹⁵ See 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321. See also *R.A.*, Docket No. 09-552 (issued November 13, 2009).

¹⁶ The Board notes that OWCP's forthcoming decision should also implicate appellant's allegation of consequential injury due to physical therapy treatment.

ORDER

IT IS HEREBY ORDERED THAT the February 13, 2012 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further action consistent with this decision of the Board.

Issued: August 15, 2012
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