

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

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<b>D.A., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 11-1645</b>
	)	<b>Issued: February 22, 2012</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Columbus, OH, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 6, 2011 appellant, through his attorney, filed an appeal of an April 28, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) affirming the denial of his claim for a left hip condition and disability after May 18, 2010. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 met his burden of proof to establish that his left hip condition and disability after May 18, 2010 was causally related to the August 24, 2009 accepted work injury.

**FACTUAL HISTORY**

On August 31, 2009 appellant, then a 46-year-old city carrier, filed a traumatic injury claim alleging that on August 24, 2009 he was bitten by a pit bull on the left thigh while

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

working. He continued working his normal duties and received initial medical care on August 24 and 26, 2009. Appellant obtained further medical care beginning early December 2009 and worked with restrictions after January 2010. In a February 10, 2010 letter, OWCP accepted the claim for dog bites to the left upper thigh and right shin. On April 14, 2010 it accepted left thigh sprain, left knee sprain and trochanteric bursitis of the right thigh. Appellant stopped work on or about May 18, 2010.

In an April 16, 2010 report, Dr. Ismail Nabeel, a Board-certified internist, stated that appellant presented for evaluation of an injury after a dog bite. Appellant had an underlying chronic condition as well as recently diagnosed avascular necrosis (AVN) of the hip, which was a primary condition. Dr. Nabeel stated that appellant was improving with regard to the work-related injuries sustained. Appellant had a knee and thigh sprains, but these conditions were improving. The major problem was from the bilateral AVN of the hip, worse on the left. Dr. Nabeel advised appellant to follow up with his primary care physician for restrictions and stated that appellant's disability was stemming from his primary care condition. In the assessment portion of the report, he stated that, for the right leg, there was improved trochanteric bursitis. For the left thigh sprain, pain was coming from AVN of the left hip and left knee sprain. Dr. Nabeel opined that the underlying chronic conditions as well as the AVN of the hip bilaterally were appellant's primary condition and not particularly related to work. He diagnosed right leg contusion, resolved trochanteric bursitis, resolved left thigh sprain/strain and left knee sprain/strain. Dr. Nabeel checked a box on a form advising that these conditions were aggravated by appellant's employment.

On May 6 and 19, 2010 appellant advised OWCP that he was going to have a left hip replacement and believed it was related to the August 24, 2009 work injury. He was advised of the factual and medical information needed to establish that his left hip necrosis condition was related to the August 24, 2009 work injury.

In a May 19, 2010 letter, OWCP advised appellant that none of the accepted conditions supported surgery for left hip necrosis and no physician had requested surgery for any of the allowed conditions. Appellant was advised to submit further medical opinion to establish his bilateral hip necrosis was caused, accelerated, aggravated or precipitated by the August 24, 2009 injury.

On May 24, 2010 appellant advised OWCP that his physician would not support that the left hip condition was related to the dog bite injury. He submitted x-rays of the left hip dated May 20, 2010, of both hips dated May 3, 2010 and of the pelvis dated May 20 and 24, 2010.

In a May 26, 2010 report, Dr. Thomas Scharschmidt, a Board-certified orthopedic surgeon, stated that appellant had AVN of the femoral head which became acutely worse after a fall the prior August. Appellant was seen in May 2010 and Dr. Scharschmidt diagnosed AVN with subchondral collapse, for which appellant underwent a total hip replacement in May 2010. As his pain became acutely worse after his accident, it was feasible that the fall caused an exacerbation of the preexisting AVN or possibly the subchondral collapse leading to surgery. In a July 12, 2010 report, Dr. Scharschmidt opined that the AVN with collapse of femoral head requiring total hip replacement was caused or aggravated by employment activity as appellant's "pain acutely worsened after dog attack." He noted that appellant was totally disabled from May 19 until July 14, 2010 but could return to duties on July 15, 2010 with restrictions.

In a June 15, 2010 report, Dr. Nabeel indicated that the work-related conditions for which appellant was treated from December 21, 2009 through April 16, 2010 were: contusion of the right leg; trochanteric bursitis of the right leg; left thigh sprain/strain; and left knee sprain/strain. He stated that the AVN of the left hip was not related to the August 24, 2009 work injury. In June 23, 2010 form reports, Dr. Nabeel did not list a hip condition as being caused or aggravated by employment activity. In a June 23, 2010 report, he noted that appellant had Crohn's disease and underwent left total hip arthroplasty on May 20, 2010. He addressed appellant's progress following surgery and assessed improved trochanteric bursitis, left thigh sprain and left knee sprain. He noted that appellant was being treated for AVN of the left hip status post surgery and stated that it was a primary condition.

In an August 18, 2010 letter, OWCP provided Dr. Scharschmidt with a copy of a statement of accepted facts and the medical record and requested that he provide a reasoned opinion addressing whether appellant's left hip condition was causally related to the August 24, 2009 injury. Dr. Scharschmidt was accorded 30 days to respond. In another August 18, 2010 letter, OWCP advised appellant's attorney that it requested that the physician provide a reasoned medical opinion on causal relation.

OWCP received additional diagnostic testing and a claim for compensation for wage loss for the period September 11 to 24, 2010.

By decision dated October 4, 2010, OWCP denied appellant's left hip condition and wage loss beginning on or about May 18, 2010. It found insufficient medical opinion, based on an accurate history, to establish the left hip condition was caused or aggravated by the August 24, 2009 injury.

On October 11, 2010 appellant, through his attorney, requested a telephonic hearing, which was held on February 7, 2011. He testified that, prior to the August 24, 2009 work incident, he did not have any problems with his left hip but they developed after that incident.

Appellant submitted additional evidence from Dr. Scharschmidt and Dr. Thomas J. Ellis, an orthopedic surgeon and associate of Dr. Scharschmidt, dated May 3 to October 3, 2010.<sup>2</sup> On May 3, 2010 Dr. Ellis noted a history of left hip pain that intensified when appellant had a fall after a dog attack. He diagnosed bilateral hip pain and AVN. In a July 20, 2010 report, Dr. Scharschmidt released appellant to work without restrictions effective immediately following the left total hip replacement of May 20, 2010. In reports dated September 1, 2010 and July 20, 2011, he stated that appellant's left hip surgery was secondary to left hip AVN and was caused or aggravated by the work injury. Dr. Scharschmidt explained that appellant's pain became acutely worse after the work injury and that it was feasible that the work injury potentially exacerbated the preexisting AVN and subchondral collapse leading to the need for surgery.

By decision dated April 28, 2011, an OWCP hearing representative affirmed the prior decision.

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<sup>2</sup> The record reflects that, in a June 27, 2011 letter, OWCP again provided Dr. Scharschmidt with a statement of accepted facts and the medical record and requested that he provide a rationalized medical opinion as to whether appellant continues to suffer from active residuals of the work-related conditions.

## LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.<sup>3</sup> A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the evidence,<sup>4</sup> including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.<sup>5</sup>

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his claimed condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury, must explain from a medical perspective how the claimed condition is related to the injury.<sup>6</sup>

It is an accepted principle of workers' compensation law 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 attributable to the employee's own intentional conduct.<sup>7</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that an employee's condition surfaced during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>8</sup> The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.<sup>9</sup>

## ANALYSIS

Appellant attributed his left hip AVN condition and disability beginning May 18, 2010 to the accepted dog bite injury of August 24, 2009. He has the burden of proof to establish a causal connection through rationalized medical opinion evidence.

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

<sup>7</sup> *John R. Knox*, 42 ECAB 193 (1990); *Lee A. Holle*, 7 ECAB 448 (1955).

<sup>8</sup> *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>9</sup> *Patricia Bolleter*, 40 ECAB 373 (1988).

Appellant came under the care of Dr. Nabeel who noted that he had an underlying chronic condition and was recently diagnosed with bilateral AVN of the hip. On April 16, 2010 Dr. Nabeel stated that the underlying chronic condition as well as the bilateral AVN of the hips were not related to the accepted work injury. In a June 15, 2010 report, he listed the job-related conditions stemming from the August 24, 2009 work injury and specifically stated that the AVN of the left hip was not related to the August 24, 2009 work injury. Dr. Nabeel's reports do not support that appellant's left hip AVN was caused or contributed to by his accepted injury.

Appellant also came under the care of Dr. Scharschmidt and underwent a left total hip replacement. In a May 26, 2010 report, Dr. Scharschmidt noted that appellant had AVN of the femoral head which became acutely worse after suffering a fall in August 2009. He did not specifically describe the dog bite incident. Dr. Scharschmidt explained that, as appellant's pain became acutely worse after his accident, it was feasible that the fall exacerbated the preexisting AVN or possibly the subchondral collapse leading to surgery. The opinion of Dr. Scharschmidt on causal relationship is speculative and not well rationalized. While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>10</sup> Dr. Scharschmidt did not adequately explain how the August 24, 2009 work-related incident caused or aggravated appellant's left hip necrosis. The record reflects that appellant entered into his care approximately a year after the accepted injury. Dr. Nabeel previously indicated that appellant's left hip condition was not work related but was a chronic underlying condition. Even though OWCP provided Dr. Scharschmidt a statement of accepted facts and the medical file, he failed to provide a narrative report with medical rationale explaining how the August 24, 2009 work-related incident caused or aggravated appellant's left hip necrosis and claimed disability. Dr. Scharschmidt's reports are insufficient to establish appellant's claim.

While the record contains treatment reports from Dr. Ellis, such reports do not specifically address how the August 24, 2009 work injury caused or aggravated appellant's left hip necrosis condition and work stoppage beginning May 18, 2010. The evidence from Dr. Ellis is insufficient to establish appellant's claim as he fails to explain the causal relationship between appellant's accepted employment injury and his claimed left hip condition and disability for the claimed period. The diagnostic reports of record are insufficient to establish the claim as they do not address causal relationship.

Appellant did not submit sufficient medical evidence to establish that his left hip AVN condition was caused by the August 24, 2009 injury. He did not meet his burden of proof.<sup>11</sup> On appeal appellant's attorney argues that OWCP's decision is contrary to fact and law. For the reasons stated, the Board finds that appellant failed to meet his burden of proof.

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<sup>10</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001).

<sup>11</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish his claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated April 28, 2011 is affirmed.

Issued: February 22, 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