

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

P.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bellmawr, NJ, Employer**

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**Docket No. 11-1787
Issued: March 21, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 18, 2011 appellant filed a timely appeal from an April 28, 2011 decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant sustained a left hip injury in the performance of duty on February 24, 2011.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence following the April 28, 2011 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

FACTUAL HISTORY

On March 8, 2011 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim alleging that on February 24, 2011 he tore a muscle in his left hip as a result of stumbling on uneven pavement, grabbing a rail and twisting himself to stop from falling down. He stopped work on February 24, 2011.

In a March 16, 2011 letter, OWCP advised appellant that no medical evidence was received to support his claim. It requested that he submit a detailed narrative medical report, which included a history of injury, description of physical findings, results of diagnostic tests, medical diagnosis and a physician's opinion supported by medical rationale explaining how the reported work incident caused or aggravated any medical condition.

In a March 3, 2011 report, Dr. Michael A. Kleinman, Board-certified in emergency medicine, stated that appellant complained of increasing left hip pain and difficulty moving around after he tripped on a crack in the sidewalk and bruised his left hip. He reviewed appellant's history and noted that an x-ray of his hip revealed bruising. Upon examination, Dr. Kleinman did not observe any clubbing, cyanosis or edema.

In a March 4, 2011 report, Dr. Thomas O'Dowd, a Board-certified orthopedic surgeon, stated that on February 23, 2011 appellant was delivering mail at work when he hit an uneven sidewalk, grabbed a railing to keep from falling and twisted his left leg. Appellant did not report significant pain at the time, but on the second day he experienced quite a bit of pain and difficulty walking. He went to the emergency room, had x-rays taken, was prescribed pain medication and a walker and was discharged. Appellant related that his pain progressively worsened. Dr. O'Dowd reviewed appellant's medical and social history and conducted an examination. He observed that passive motion of appellant's left hip caused a little bit of pain and that twisting resulted in significant pain. X-rays of the left hip showed degenerative joint disease (DJD) in the left hip, which Dr. O'Dowd noted was a bit premature for appellant's age. A computerized axial tomography (CAT) scan further revealed arthritis in the left greater than right hip with some cystic changes. Dr. O'Dowd diagnosed deep muscle hematoma, muscle injury, developed myoglobinemia and renal failure. He opined that appellant "probably" had a deep muscle injury twisting and doing a nonfalling split on his left leg.

In a March 7, 2011 report, Dr. Martin Topiel, a Board-certified internist, noted that appellant had a low-grade temperature and an unusual presentation of left hip trauma. He related that appellant tripped while walking as a mailman and bruised his hip. Appellant was admitted to the hospital on March 3, 2011. Upon examination, Dr. Topiel noted appellant's complaints of pain in his left hip and trouble moving his left leg. He opined that this would seem to be a presentation of trauma with secondary bleeding or hematoma.

In a March 9, 2011 report, Dr. Stephen E. Zrada, a Board-certified internist, stated that appellant was a mailman who slipped and twisted his leg a couple of days ago. Appellant initially denied any discomfort but developed significant left leg and hip discomfort over the following 24 to 48 hours. Dr. Zrada reviewed appellant's history and conducted an examination. A magnetic resonance imaging (MRI) scan revealed swelling and evidence of edema within the left hip region. A CAT scan of the hip showed significant muscle edema and appearance of

inflammation. Dr. Zrada observed trace edema in appellant's left hip, but he was unable to palpate the region without any pain.

In a March 16, 2011 continuation of pay (COP) report, a nurse stated that appellant sustained a left hip injury at work and went to the emergency room. Appellant was sent home but returned in three days and was admitted with a left hip hairline fracture and complications from internal bleeding. The nurse indicated that home physical therapy would start on March 16, 2011 and recommended that he be referred to a field nurse.

In a March 10, 2011 letter, the employing establishment controverted appellant's claim contending that he did not submit any medical evidence to substantiate his claim and that he did not submit any evidence to establish that the injury occurred while he performed his official duties. It stated that appellant's supervisor called him to obtain additional information regarding his claim but he was unable to talk and never called his supervisor back. The employing establishment also noted that appellant was able to complete his assignment on February 24, 2011 and left without notifying his supervisor. Appellant also did not notify the employing establishment of his alleged February 24, 2011 injury until March 9, 2011, 13 days after the date of injury.

In a decision dated April 28, 2011, OWCP denied appellant's claim finding insufficient medical evidence to establish that he sustained any condition as a result of the February 24, 2011 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence³ 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.⁴ As part of this burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background on whether a causal relationship exists between the claimant's diagnosed condition and the established employment incident.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁶ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *A.C.*, Docket No. 08-1453 (issued November 18, 2008); *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *George H. Clark*, 56 ECAB 162 (2004).

⁶ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

specified employment factors or incident.⁷ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁸

ANALYSIS

Appellant alleges that on February 24, 2011 he sustained a left hip injury in the performance of duty when he tripped on the sidewalk, grabbed a rail to stop from falling and twisted his body at work. OWCP accepted that the incident occurred as alleged but denied his claim finding insufficient medical evidence to establish that he sustained any diagnosed condition as a result of the accepted employment incident. The Board finds that appellant failed to provide sufficient medical evidence establishing that he sustained a left hip injury as a result of the February 24, 2011 work incident.

Appellant submitted various hospital records by numerous physicians from when he was admitted into the hospital. Drs. Kleinman and Topiel both noted bruising in appellant's hip. In addition, Dr. O'Dowd observed DJD and arthritis in appellant's left hip and diagnosed a deep muscle hematoma. The Board finds that the medical evidence fails to establish that appellant's left hip condition was causally related to the February 24, 2011 employment incident. Drs. Kleinman, Zrada, and Topiel noted that appellant's slipped on the sidewalk and bruised his hip at work. None of these physicians, however, provided an accurate date of injury or any medical explanation as to how twisting the left leg, without falling, would have caused bruising and degenerative changes of the hip. Because medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value, these reports are insufficient to establish appellant's claim.⁹

The report by Dr. O'Dowd is likewise insufficient to meet appellant's burden of proof. He provided an accurate history of injury that appellant tripped on the sidewalk at work and twisted his body to keep from falling. Dr. O'Dowd noted that appellant "probably" had a deep muscle injury twisting from doing a nonfalling split on his left leg. His opinion that appellant "probably" had a deep muscle injury, however, is speculative in nature. Furthermore, Dr. O'Dowd also did not describe the physiological process by which twisting of the leg would have caused bruising of the hip and degenerative changes of the hip. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.¹⁰ Dr. O'Dowd's report, therefore, is insufficient to establish appellant's claim.

The record also contains a COP report from a registered nurse, who noted a hairline fracture of the hip. Nurses, however, are not considered "physicians" as defined by FECA and

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *D.S.*, Docket No. 09-860 (issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007).

⁹ *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

¹⁰ *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

their medical opinions are of no probative value regarding causal relationship.¹¹ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical opinion evidence.¹² The Board finds that, because appellant has not submitted such rationalized medical opinion evidence in this claim, he did not meet his burden of proof to establish his claim.

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 that he sustained an injury in the performance of duty on February 24, 2011.

¹¹ *E.H.*, Docket No. 08-1862 (issued July 8, 2009); section 8102(2) of FECA provides that the term “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law; *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹² *Mary J. Summers*, *supra* note 6.

ORDER

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

Issued: March 21, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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