

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

J.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 12-758
Issued: October 5, 2012**

Appearances:
Aaron B. Aumiller, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On February 22, 2012 appellant, through counsel, filed a timely appeal from a January 12, 2012 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.

ISSUE

The issue is whether appellant has established that he sustained a right hip condition in the performance of duty on October 12, 2010, as alleged.

On appeal appellant's counsel contends that OWCP incorrectly interpreted the law and facts. Specifically, he contends that OWCP failed to give appropriate weight and consideration to medical reports from appellant's treating physicians.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 12, 2010 appellant, then a 52-year-old city carrier, filed a traumatic injury claim alleging that on that date he sustained right hip avulsion fracture and severe arthritis as the result of carrying a heavy bag of parcels and mail up a steep incline.

In an October 19, 2010 duty status report (Form CA-17), Dr. R. Bruce Heppenstall, a treating Board-certified orthopedic surgeon, diagnosed right hip arthritis and indicated that appellant was totally disabled from working. He noted that appellant fell on October 12, 2010 while going up a steep incline with heavy parcels and felt pain and pressure in his front. In an October 19, 2010 narrative report, Dr. Heppenstall diagnosed severe osteoarthritis. He provided physical findings and x-ray interpretations of the hips. Appellant related that he injured his back and felt a sharp pain in his right hip while delivering mail up a steep incline on October 12, 2010. Dr. Heppenstall stated that it was obvious that the degenerative arthritis had been present for a long time. On November 4, 2010 he stated that appellant was seen for his right hip degenerative arthritis and recommended a total right hip replacement.

By letters dated December 16 and 21, 2010, OWCP informed appellant that the evidence of record was insufficient to support his claim. It advised him as to the type of medical and factual evidence required to support his claim. Appellant was given 30 days to provide the requested information. He did not reply within the allotted time.

By decision dated January 28, 2011, OWCP denied appellant's traumatic injury claim on the grounds that he failed to establish that the diagnosed condition was due to the October 12, 2010 employment incident.

Subsequent to the denial of his claim, OWCP received a January 10, 2011 surgical report, a July 26, 2011 report and progress notes dated June 21 and September 1, 2011. The January 10, 2011 surgical report diagnosed severe right hip degenerative arthritis and noted that appellant underwent total right hip arthroplasty.

Dr. Heppenstall, in a June 21, 2011 progress note, reported that appellant was doing well following his right hip surgery and that he was ambulating well. A physical examination revealed full hip range of motion.

On July 26, 2011 Dr. Ernest J. Gentchos, a treating Board-certified orthopedic surgeon, stated that appellant had right hip pain since his surgery in January. Appellant related that he believed he was unable to perform his work duties as he was unable to walk or stand. A physical examination revealed pain in the right abductor muscles, a palpable right groin femoral artery and no right lower extremity weakness. Appellant, however, was apprehensive and somewhat guarded with internal rotation and adduction of the right hip.

In progress notes dated September 1, 2011, Dr. Heppenstall related that appellant attempted to return to work, but was only able to work one and one-half hours. He recommended that appellant apply for disability.

By letter dated December 23, 2011, appellant's counsel requested reconsideration and submitted medical evidence in support of the request. In a December 14, 2011 report,

Dr. Heppenstall noted that he first saw appellant on October 19, 2010 for right hip and low back discomfort and pain. Physical findings included decreased right hip motion and pain. A review of x-ray interpretations revealed severe osteoarthritis and “the possibility of an old trauma.” Dr. Heppenstall related that appellant felt he injured his back on October 12, 2010 while delivering mail up a steep incline. Appellant told the physician he had no prior employment injuries. Dr. Heppenstall related that prior to the October 12, 2010 employment incident appellant was able to perform his employment duties even though he had right hip degenerative arthritis. Appellant believed that he was totally disabled from performing his duties as a mail carrier due to limitations imposed by his hip condition. In concluding, Dr. Heppenstall opined that appellant’s right hip condition appeared to be due to his employment duties based on examination findings and objective medical evidence.

By decision dated January 12, 2012, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his 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.³ 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.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁵ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁶ 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.⁷

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁸ An award of

² 5 U.S.C. § 8101 *et seq.*

³ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁴ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

⁶ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁷ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3.

⁸ *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹⁰ 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 compensable employment factors.¹¹ 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.¹²

ANALYSIS

Appellant alleged that he sustained right hip avulsion fracture and severe arthritis as the result of carrying a heavy bag of parcels and mail up a steep incline on October 12, 2010. OWCP found the evidence sufficient to establish that the incident occurred as alleged, but that the evidence of record was devoid of any medical evidence diagnosing a condition causally related to the October 12, 2010 employment incident. The issue is whether appellant has established that he sustained a right hip condition causally related to the October 12, 2010 employment incident. The Board finds that he has failed to meet his burden of proof.

In support of his claim, appellant submitted various reports from Dr. Heppenstall, a surgical report and a report from Dr. Gentchos.

In his reports, Dr. Heppenstall diagnosed severe osteoarthritis. Additionally, on October 19, 2010 he noted that appellant felt a sharp pain in his right hip and back while delivering mail up a steep incline on October 12, 2010. Dr. Heppenstall recommended a total hip replacement on November 4, 2010. He noted that appellant was doing well following the right hip surgery on June 21, 2011, but recommended that appellant apply for disability in his September 1, 2011 progress note due to appellant's unsuccessful attempt to return to work. In his December 14, 2011 report, Dr. Heppenstall opined that appellant's right hip condition appeared to be due to his employment duties. He noted that appellant had no prior employment injuries and was able to perform his duties prior to the October 12, 2010 employment incident. The Board finds that Dr. Heppenstall failed to directly address the issue of causal relationship as he did not explain how the mechanism of the October 12, 2010 employment incident caused or aggravated appellant's preexisting severe right hip osteoarthritis. Dr. Heppenstall did not

⁹ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹¹ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹² *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

provide medical rationale explaining how appellant's right hip condition had been caused or aggravated by walking up a steep incline to deliver mail on October 12, 2010. Lacking thorough medical rationale on the issue of causal relationship, the reports are of limited probative value and not sufficient to establish that appellant sustained an employment-related injury in the performance of duty on October 12, 2010.¹³

Appellant also submitted reports from Dr. Gentchos which are of limited probative value since none offered an opinion on whether appellant's October 12, 2010 employment incident caused or aggravated his right hip condition.¹⁴

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's conditions became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹⁵ Causal relationship must be established by rationalized medical opinion evidence and he failed to submit such evidence.

OWCP advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Consequently, appellant has not met his burden of proof in establishing that his claimed right hip condition was causally related to the October 12, 2010 employment incident.

On appeal appellant's counsel contends that OWCP erred in its consideration of the medical evidence submitted by appellant and failed to correctly apply the law and the facts to evidence submitted. For the reasons stated above, the Board finds that his arguments are not substantiated.

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 failed to establish that he sustained a right hip condition causally related to the accepted October 12, 2010 employment incident.

¹³ See *S.S.*, 59 ECAB 315 (2008); *Richard A. Neidert*, 57 ECAB 474 (2006); *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof). See also *M.W.*, 57 ECAB 710 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005) (medical conclusions based on an inaccurate or incomplete factual history are of diminished probative value).

¹⁴ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Ellen L. Noble*, 55 ECAB 530 (2004).

¹⁵ See *D.U.*, Docket No. 10-144 (issued July 27, 2010); *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 12, 2012 is affirmed.

Issued: October 5, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board