



employment. He related that he experienced left knee pain that spread into the left hip from walking on concrete floors. Appellant stopped work on September 25, 2009.

By letter dated February 1, 2010, OWCP requested that appellant provide a description of the work factors to which he attributed his condition and submit a detailed medical report addressing the relationship between any diagnosed condition and his federal employment duties.

In a decision dated March 1, 2010, OWCP denied appellant's claim on the grounds that he had not established the work factors alleged to have caused his condition or submitted medical evidence relating a diagnosed condition to the identified work factors.

On March 22, 2010 appellant, through his attorney, requested a telephone hearing before an OWCP hearing representative. At the telephone hearing, held on June 1, 2010, he indicated that he had prior employment injuries, including a 1987 injury to the left knee, assigned file number x xxxxx190. Appellant described his work duties and indicated that he began to experience hip pain when standing. He related that a physician told him that his hip problem resulted from a combination of his prior left knee condition and his work duties.

In a report dated June 17, 2010, Dr. J. Michael Joly, a Board-certified orthopedic surgeon, discussed appellant's history of a November 11, 2009 left hip replacement and noted that he had "questions regarding the cause of the left hip pain and osteoarthritis..." He stated, "[Appellant] has had severe left hip osteoarthritis most likely for years as a result of favoring the left knee which was injured on the job back in January 2009. It is possible within a reasonable degree of medical certainty that the severe left hip osteoarthritis, which was preexisting, is aggravated by the fact that he was favoring an injured left knee."

By decision dated July 20, 2010, OWCP's hearing representative affirmed the March 1, 2010 decision. She found that appellant had not submitted any medical evidence.

On April 27, 2012 appellant's attorney indicated that he had submitted a request for reconsideration on July 26, 2010. On October 10, 2012 counsel inquired why OWCP had not issued a decision on his reconsideration request.

In a decision dated January 10, 2013, OWCP denied modification of its July 20, 2010 decision. It reviewed Dr. Joly's June 17, 2010 report and found that it did not contain sufficient rationale to establish causal relationship between the hip condition and factors of appellant's federal employment.<sup>2</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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

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<sup>2</sup> OWCP indicated that Dr. Joly submitted reports dated June 17 and July 26, 2010; however, there is only one report and it is dated June 17, 2010.

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

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.<sup>4</sup> 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.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;<sup>6</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>7</sup> and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>8</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>9</sup> must be one of reasonable medical certainty<sup>10</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>11</sup>

### ANALYSIS

Appellant attributed his left hip condition to a prior left knee injury and to standing and walking on a concrete floor in the performance of his work duties. He described his work duties in detail at the hearing. OWCP denied appellant's claim after finding that the medical evidence did not establish that he sustained an employment-related left hip condition.

On June 17, 2010 Dr. Joly noted that appellant had undergone a left hip replacement on November 11, 2009. He diagnosed a history of severe osteoarthritis of the left hip due to a change in gait caused by a January 2009 injury to the left knee. Dr. Joly opined that appellant's left knee injury aggravated the left hip arthritis.

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between his claimed condition and his

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<sup>4</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *See Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>6</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>7</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>8</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>9</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>10</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>11</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

employment.<sup>12</sup> Appellant must submit a physician's report in which the physician reviews those factors of employment identified by him as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.<sup>13</sup> Dr. Joly's report fails to adequately explain how appellant's prior or current employment condition caused the current need for hip surgery. Without a rationalized analysis of causation, appellant has failed to discharge his burden of proof.

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 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained a left hip condition causally related to factors of his federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 10, 2013 is affirmed.

Issued: June 7, 2013  
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

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<sup>12</sup> *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

<sup>13</sup> *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).