



## **FACTUAL HISTORY**

On November 10, 2008 appellant, then a 55-year-old letter carrier, filed an occupational disease claim alleging lower back and left hip pain as a result of delivering mail and carrying her mailbag in the performance of duty. She first became aware of her condition on January 15, 2008 and realized that it was caused or aggravated by her employment on August 11, 2008. Appellant stopped work on September 12, 2008. The employing establishment controverted the claim.

On January 12, 2009 OWCP advised appellant that there was insufficient evidence to establish her claim. It requested additional information to establish that she sustained a lower back and left hip condition causally related to her employment duties.

In a January 21, 2009 report, Dr. Samantha Shah, a Board-certified internist, noted that appellant had worked as a postal carrier since 1989 and described her work duties. She noted that appellant developed progressively worsening lower back and left hip pain and that she stopped work in August 2008. Dr. Shah recommended appellant undergo left hip replacement.

In an April 22, 2009 report, Dr. David L. Mattingly, an osteopath, related appellant's complaints of back and left hip pain with left leg radicular symptoms. He reported that performing normal duties on her job involved carrying a fairly heavy mailbag for considerable distances. Appellant experienced a pulling and painful sensation in her lower back. Dr. Mattingly noted that appellant stopped work on September 12, 2008 when the pain became too disabling to allow her to continue working. Upon examination, he observed tenderness of the lumbar spine with range of motion, but no significant spasms were present. Flexion was limited to 65 degrees with extension decreased to 5 degrees. Straight leg raise was positive on the left. Dr. Mattingly diagnosed severe left hip osteoarthritis, degenerative disc disease of the lumbar spine, lumbar radiculopathy and ambulatory dysfunction. He opined that after looking through appellant's medical history, examining her and reviewing her detailed description of her work that these injuries were a direct result of the repetitive stress produced by her job working as a mail carrier. Dr. Mattingly explained that working 8 to 10 hours, six days a week, placed a considerable amount of physical stress upon the joints of her hip and lower back. He also stated that, at some point while performing her normal duties, appellant developed bulging and tearing discs of the lumbar spine. Dr. Mattingly reported that she was unable to return to her job as postal carrier or any job that required her to be on her feet for even short periods of time.

In a decision dated February 12, 2009, OWCP accepted that appellant's employment duties as a letter carrier required carrying mail and a mailbag. It denied her claim finding insufficient medical evidence to establish that her lower back or left hip conditions were causally related to factors of her employment.

On February 17, 2009 appellant, through counsel, requested a telephone hearing, which was held on May 20, 2009. By decision dated September 15, 2009, an OWCP hearing representative set aside the February 12, 2009 decision and remanded the case for further development of the medical evidence.

OWCP referred appellant, together with a statement of accepted facts, to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether her employment duties caused or contributed to her back and left hip conditions. It also asked Dr. Hanley to address whether appellant's diagnosed conditions necessitated left hip replacement surgery. In a November 30, 2009 report, Dr. Hanley conducted an examination and diagnosed bilateral hip arthritis and degenerative disc disease. He stated that the conditions were not caused by appellant's work duties but were long-standing and degenerative in nature. Dr. Hanley explained that, although her work activities did not cause her condition, they resulted in temporary aggravation of her underlying degenerative disc disease and degenerative left hip arthritis conditions. He stated that when appellant stopped work so did the aggravation and that, if she were to return to work, she could again reinitiate the aggravating situation. Dr. Hanley concluded that her employment did not contribute in any way to the development of her back and hip conditions or to the need for surgical intervention in the form of hip replacement.

In a decision dated December 10, 2009, OWCP denied appellant's claim finding that the weight of the medical opinion rested with Dr. Hanley.

On December 15, 2009 appellant's counsel submitted a request for a telephone hearing, which was held on June 2, 2010. By decision dated July 20, 2010, an OWCP hearing representative found that a conflict in medical opinion arose between Dr. Hanley, the second-opinion examiner, and Dr. Mattingly, appellant's treating physician. The case was remanded to obtain an impartial medical examination on whether appellant's employment duties caused or aggravated her back or left hip conditions and whether her employment duties necessitated the need for left hip replacement surgery.

On September 13, 2010 appellant was referred to Dr. Walter Dearolf, III, a Board-certified orthopedic surgeon, selected as the impartial specialist. In an October 7, 2010 report, Dr. Dearolf noted that she had worked as a postal carrier since 1989 and that her duties included casing and delivering mail and lifting tubs of mail in and out of a delivery truck. On January 15, 2008 appellant began to experience pain and pulling in her left lower back that radiated down her left hip and thigh. Dr. Dearolf reviewed her history and noted that treatment notes from Dr. Corcoran were not available for review. He stated that appellant had underlying degenerative arthritis of both hips and her lumbar spine, which became progressively worse. Dr. Dearolf reported that, based on x-rays and her symptomatology, she was a candidate for total hip replacement surgery but found that it was unrelated to any January 15, 2008 work injury.

Upon examination, Dr. Dearolf observed tenderness over the left sacroiliac and left paraspinal lumbar musculature. He noted good lateral bending to the left but only a third normal lateral bending to the right, limited by pain. Examination of both hips revealed significantly reduced internal rotation with minimal internal rotation bilaterally and approximately half normal external rotation. Straight leg raise tests were negative and sensation seemed intact to light touch throughout the lower extremities. Dr. Dearolf reported that x-rays of appellant's hips revealed narrowing particularly in the superolateral corner bilaterally with cyst formation and joint space narrowing to about half normal in the hip. A magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated degenerative disc disease at L2-3 and L4-5 with disc bulges and stenosis most pronounced at L4-5.

Dr. Dearolf explained that appellant's employment duties did not cause her underlying back and left hip condition but resulted in a temporary aggravation of the underlying degenerative disease. He stated that her degenerative arthritis in the left hip was present before January 15, 2008 and noted that her condition had worsened despite not working for the prior last two years. Dr. Dearolf concluded that appellant's employment did not necessitate the need for hip replacement surgery or cause any acceleration of her underlying degenerative disease. He opined that, because of her degenerative condition, she was unable to return to her previous level of employment.

By decision dated November 18, 2010, OWCP accepted appellant's claim for temporary aggravation of her preexisting lumbar degenerative disc disease and left hip degenerative osteoarthritis.

On December 13, 2010 appellant filed a claim for disability compensation for the period September 10, 2008 to December 15, 2010.

In a decision dated February 11, 2011, OWCP denied appellant's claim for total left hip replacement surgery and denied the claim for disability from September 10, 2008 to December 15, 2010. It found that the weight of the medical opinion established that the accepted aggravation ceased at the time she stopped work and that her employment duties did not necessitate hip replacement surgery. OWCP also found that there was no medical evidence to support any period of disability causally related to her accepted back and left hip conditions.

On February 16, 2011 appellant, through counsel, submitted a request for a telephone hearing, which was held on June 1, 2011. Counsel contended that Dr. Dearolf's impartial medical report did not provide a well-reasoned explanation as to how he arrived at his conclusion that hip surgery was unrelated to her accepted injury. He also stated that Dr. Dearolf's opinion was based on inaccurate history because he did not have all the medical records for review and referred to a January 15, 2008 injury, instead of an occupational disease. Counsel further noted that Dr. Dearolf's report established that she was unable to work and should be entitled to disability compensation beginning September 10, 2008.

In an August 27, 2010 report, Dr. Mattingly stated that appellant had been under his care since February 11, 2009 and treated for left hip osteoarthritis, degenerative disc disease of the lumbar spine, lumbar radiculopathy and ambulatory dysfunction. He reported that she was unable to perform her normal duties since the onset of symptoms in January 2008 due to ambulatory dysfunction and pain with movement.

In an April 26, 2011 report, Dr. Mattingly stated that he had treated appellant for approximately three years for lumbar spine pain with radiculopathy and bilateral hip osteoarthritis with exacerbation. He noted that he reviewed her records and understood her work duties. Dr. Mattingly opined that the development of the osteoarthritis of the hips was in part due to the nature of appellant's work as a letter carrier. It required several hours a day on her feet carrying fairly heavy mailbags with considerable amount of lifting and twisting. Dr. Mattingly explained that during the normal duties of her job appellant experienced an exacerbation of this chronic condition, which prevented her from returning to work and also led

to her hip surgery. He concluded that her need for surgical intervention was a direct result of the work-related exacerbation of a chronic hip condition.

In a July 19, 2011 decision, an OWCP hearing representative remanded the case stating that Dr. Dearolf did not provide a fully-rationalized medical opinion in support of his conclusion. OWCP was directed to provide him with all of appellant's medical records and clarify that her claim was accepted as an occupational disease, not a traumatic injury. The hearing representative requested Dr. Dearolf clarify his opinion finding that left hip surgery was not medically necessary to treat her work-related aggravation of underlying conditions or caused disability during or subsequent to her employment.

In a September 24, 2011 supplemental report, Dr. Dearolf noted that he reviewed the additional material provided but his opinion did not change. He reported that appellant had underlying degenerative disease in her hip and back that was not brought on by a particular event. Dr. Dearolf noted that a patient with arthritis in her hip would find it difficult to continue to work as a mail carrier. He agreed with Dr. Hanley's November 30, 2009 opinion that appellant's employment did not contribute in any way to the development of the back and hip conditions or the need of any surgical intervention, either a hip replacement or hip arthroscopy. Dr. Dearolf opined that, at most, her employment caused a temporary aggravation of the underlying degenerative condition and that any temporary aggravation would have ceased when she stopped work on September 12, 2009. He stated that appellant's work as a mail carrier would aggravate her degenerative arthritis but that the left hip symptoms related to the work environment would have subsided once she stopped work as a mail carrier. Dr. Dearolf concluded that treatment for a total hip replacement was in no way related to her work injury. He also reported that appellant was not capable of returning to her previous work as a mail carrier, but that her inability to work was based on her underlying degenerative disease and not a work-related injury.

By decision dated November 21, 2011, OWCP denied authorization for left hip replacement and appellant's claim for disability compensation for the period September 10, 2008 to December 15, 2010. It found that Dr. Dearolf determined that surgery was not medically warranted for the accepted conditions and that there was no related disability associated with the accepted conditions.

On November 29, 2011 appellant, through counsel, requested a telephone hearing, which was held on April 19, 2012. She described her work duties as a letter carrier and noted that her last day of work was September 2008. Appellant stated that her symptoms had stayed the same since she stopped work. Her counsel contended that the opinions of Drs. Hanley's and Dearolf's were unsupported by medical rationale. He disagreed that appellant sustained a temporary aggravation of her underlying conditions and noted that her treating physicians consistently stated that her conditions were permanent. Counsel also alleged that Dr. Dearolf's report supported that appellant was unable to perform her work duties and, therefore, she was entitled to disability compensation.

In a May 2, 2012 report, Dr. Corey K. Ruth, a specialist in sports medicine, examined appellant for bilateral hip pain and tenderness in the low back. He diagnosed bilateral hip osteoarthritis and L3-S1 bulging discs/spondylosis with lumbar radiculitis. Dr. Ruth opined that

appellant suffered a permanent aggravation of her underlying arthritis of her bilateral hips as a result of her duties as a mail carrier for the employing establishment.

In a decision dated July 27, 2012, an OWCP hearing representative affirmed the November 21, 2011 decision denying authorization for appellant's left hip replacement surgery. OWCP further found that she was not disabled from work for the period September 10, 2008 to December 15, 2010 as a result of her accepted employment injury.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8103(a) of FECA provides for the furnishing of services, appliances and supplies prescribed or recommended by a qualified physician which OWCP, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening in the amount of monthly compensation.<sup>2</sup> In interpreting the section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.<sup>3</sup> OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on the OWCP's authority is that of reasonableness.<sup>4</sup> Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>5</sup>

While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.<sup>6</sup> Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.<sup>7</sup> Therefore, in order to prove that the surgical procedure is warranted, appellant must submit evidence to show that the procedure was for a condition causally related to the employment injury and that the surgery was medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.<sup>8</sup>

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who

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<sup>2</sup> 5 U.S.C. § 8103; see *Thomas W. Stevens*, 50 ECAB 288 (1999).

<sup>3</sup> *W.T.*, Docket No. 08-812 (issued April 3, 2009); *A.O.*, Docket No. 08-580 (issued January 28, 2009).

<sup>4</sup> *D.C.*, 58 ECAB 629 (2007); *Mira R. Adams*, 48 ECAB 504 (1997).

<sup>5</sup> *L.W.*, 59 ECAB 471 (2008); *P.P.*, 58 ECAB 673 (2007); *Daniel J. Perea*, 42 ECAB 214 (1990).

<sup>6</sup> See *Debra S. King*, 44 ECAB 203, 209 (1992).

<sup>7</sup> *Id.*; see also *Bertha L. Arnold*, 38 ECAB 282 (1986).

<sup>8</sup> See *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

shall make an examination.<sup>9</sup> This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>10</sup> When there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant sustained temporary aggravation of preexisting degenerative disc disease and left hip degenerative osteoarthritis as a result of her employment duties. Appellant stopped work on September 12, 2008. In a January 21, 2009 report, Dr. Shah recommended appellant undergo left hip replacement surgery. In a November 30, 2009 report, Dr. Hanley, a second-opinion examiner, explained that, although appellant's employment duties resulted in temporary aggravation of underlying degenerative disc disease and degenerative left hip arthritis, the aggravation ceased when she stopped work. He concluded that her employment did not result in a need for surgical intervention in the form of hip replacement. OWCP found that a conflict in medical opinion existed between appellant's treating physician and the second-opinion examiner and referred her case to an impartial medical examiner to resolve the conflict.

In October 7, 2010 and September 24, 2011 reports, Dr. Dearolf, the impartial medical examiner, provided an accurate history of injury and reviewed appellant's records. He stated that she had underlying degenerative arthritis of both hips and lumbar spine and noted that these symptoms had progressively worsened while she had been out of work for the last two years. Upon examination Dr. Dearolf observed tenderness over the left sacroiliac and left paraspinal lumbar musculature. Straight leg raise tests were negative. Examination of both hips revealed significantly reduced internal rotation with minimal internal rotation bilaterally and approximately half normal external rotation. Dr. Dearolf explained that appellant's employment duties resulted in a temporary aggravation of an underlying degenerative disease and that her left hip symptoms related to her employment would have ceased when she stopped work as a mail carrier. He concluded that her treatment for total hip replacement surgery was in no way related to her accepted work injury.

The Board finds that Dr. Dearolf's reports are sufficiently detailed and well reasoned to constitute the special weight of medical opinion regarding whether the left total hip replacement was medically necessary. When there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>12</sup> Dr. Dearolf reviewed

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<sup>9</sup> 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

<sup>10</sup> 20 C.F.R. § 10.321.

<sup>11</sup> *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>12</sup> *Id.*

appellant's history and accurately described her duties as a letter carrier. He conducted an examination and found that her work duties resulted in a temporary aggravation of underlying degenerative disc disease and left hip osteoarthritis conditions. Dr. Dearolf further explained that because appellant's left hip symptoms related to her employment would have ceased when she stopped work as a mail carrier in September 2008, the need for left total hip replacement surgery was not related to her accepted work-related injury. Thus, the Board finds that Dr. Dearolf's opinion, as set forth in the October 7, 2010 and September 24, 2011 reports were found to be probative and reliable evidence. Accordingly, Dr. Dearolf's opinion constitutes the special weight of evidence and is sufficient to justify OWCP's denial of authorization for left hip replacement surgery.

The Board further finds that the medical evidence submitted by appellant after Dr. Dearolf's impartial medical examiner report is insufficient to overcome the weight of this report or to create another conflict in medical evidence. Appellant submitted various reports by Dr. Mattingly stating that her need for surgery was a direct result of the work-related exacerbation of a chronic hip condition. The Board finds, however, that his report is of limited probative value as he offers a conclusion which is unsupported by medical rationale.<sup>13</sup> Appellant also submitted a May 2, 2012 report by Dr. Ruth, who opined that she sustained a permanent aggravation of her underlying arthritis of her bilateral hips as a result of her duties as a mail carrier. The Board finds that this report is also of limited probative value as he provides no opinion on whether left hip total replacement was necessary to treat her work-related injury. These reports are insufficient to overcome the special weight afforded to Dr. Dearolf's impartial medical examination report. The Board finds that his opinion constitutes the special weight of medical opinion and supports OWCP's decision that the need for left total hip replacement was not causally related to appellant's work-related injury.

On appeal appellant, through counsel, contends that Dr. Dearolf's opinion is not well rationalized. He further alleges that appellant's case should be accepted for permanent aggravation of her underlying conditions. The Board notes that Dr. Dearolf's September 24, 2011 supplemental report corrected the deficiencies of the initial previous report. Dr. Dearolf provided a well-rationalized opinion regarding authorization for left hip replacement surgery.

### **LEGAL PRECEDENT -- ISSUE 2**

The term disability as used in FECA means the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>14</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>15</sup> The opinion of the

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<sup>13</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-975 (February 6, 2009).

<sup>14</sup> 20 C.F.R. § 10.5(x).

<sup>15</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).



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.<sup>16</sup>

If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>17</sup>

### **ANALYSIS -- ISSUE 2**

As noted, OWCP accepted that appellant sustained a temporary aggravation of preexisting degenerative disc disease and left hip degenerative osteoarthritis as a result of her employment duties. Appellant stopped work on September 12, 2008. On December 13, 2010 she filed a claim for disability compensation for the period September 10, 2008 to December 15, 2010. OWCP denied appellant's claim finding insufficient medical evidence to establish that she was disabled from work as a result of her work-related injury. The Board finds a conflict in medical opinion arose between Dr. Dearolf and Dr. Mattingly, appellant's treating physician.

Appellant submitted various reports by Dr. Mattingly. In an April 22, 2009 report, Dr. Mattingly related her complaints of back and left hip pain and noted that she stopped work on September 12, 2008 when the pain became too disabling to allow her to continue working. He conducted an examination and diagnosed severe left hip osteoarthritis, degenerative disc disease of the lumbar spine and lumbar radiculopathy. Dr. Mattingly opined that these injuries were a direct result of the repetitive stress produced by appellant's job as a mail carrier. He reported that she was unable to return to her job as a postal carrier or any job that required her to be on her feet for even short periods of time. In an August 27, 2010 report, Dr. Mattingly stated that appellant was unable to perform her normal duties since the onset of symptoms in January 2008. In a September 14, 2011 report, Dr. Dearolf agreed that she was not capable of returning to work but explained that her inability to work was based on her underlying degenerative conditions and not the work-related injury. The Board noted that the question of appellant's disability for the period claimed was not asked of Dr. Dearolf, in his status as an impartial specialist on the question of the need for hip replacement surgery. A conflict in medical opinion exists regarding whether appellant was disabled from work as a result of her accepted conditions.<sup>18</sup>

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<sup>16</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>17</sup> 5 U.S.C. § 8123; 20 C.F.R. § 10.321(b); *see also Darlene R. Kennedy*, 57 ECAB 414 (2006).

<sup>18</sup> The Board notes Dr. Dearolf's September 14, 2011 report does not constitute an impartial medical examination regarding appellant's disability compensation claim as a conflict in medical opinion did not exist at the time regarding whether she was disabled from work during the claimed period as a result of her accepted conditions. Accordingly, Dr. Dearolf's September 14, 2011 opinion regarding disability is considered a second-opinion examination and his opinion is not entitled to the special weight of medical evidence with regard to her disability compensation claim.

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>19</sup> The case will be remanded for an impartial medical examiner to resolve the conflict in medical opinion. On remand, OWCP should refer appellant and a statement of accepted facts to an appropriate physician to examine her and evaluate the evidence pursuant to section 8123(a) of FECA. Following this and such further development as OWCP deems necessary, it shall issue an appropriate decision.

**CONCLUSION**

The Board finds that OWCP did not abuse its discretion in denying appellant's request for surgical authorization. The Board also finds that the case is not in posture for decision regarding whether she was disabled from work from September 10, 2008 to December 15, 2010 as a result of her work-related injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 27, 2012 decision of the Office of Workers' Compensation Programs is affirmed in part and remanded in part.

Issued: November 15, 2013  
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

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<sup>19</sup> *Supra* note 17.