

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

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M.H., Appellant )  
and ) Docket No. 14-98  
U.S. POSTAL SERVICE, POST OFFICE, ) Issued: April 15, 2014  
Livonia, MI, Employer )  
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)

*Appearances:*

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 18, 2013 appellant, through her attorney, filed a timely appeal from an October 4, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 her burden of proof to establish a right hip injury in the performance of duty on February 5, 2011.

**FACTUAL HISTORY**

On February 13, 2012 appellant, then a 46-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging an injury to her right hip in the performance of duty. She noted that her injury was due to a slip on ice and snow while delivering her route in

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

the winter of 2010. Appellant became aware of her condition and first realized its connection to her federal employment on October 26, 2011. She did not file her claim within 30 days because she had a right hip arthroscopy on January 20, 2012 to confirm her diagnosis. Appellant first reported her condition to her supervisor on February 10, 2012, having stopped work on January 20, 2012.

By letter dated February 13, 2012, the employing establishment controverted appellant's claim. It noted that she had not given any notice that she sustained a work-related injury during the time frame stated in her claim or filed a claim until a year after the injury. The employing establishment asserted that appellant could not provide a date or location for her injury. It submitted e-mails from coworkers stating that she had not informed them of slipping on ice and snow. The employing establishment noted that appellant had waited until after having surgery to file her claim and that she had preexisting conditions.

In a statement dated February 7, 2012, appellant noted that her right hip pain began in the winter of 2010. She stated that her injury occurred when she slipped, but did not fall, on snow and ice. Appellant received several epidural injections from December 2010 through February 2011, which did not provide relief. She explained that she underwent hip surgery after a physician diagnosed a tear of the right hip ball joint.

On January 26, 2012 Dr. Philip T. Schmitt, a Board-certified orthopedic surgeon, diagnosed appellant with right hip atrophy. He noted that she would be disabled from work for the next six weeks.

By letter dated February 27, 2012, OWCP requested additional factual and medical evidence from appellant. It noted that she had not substantiated the factual elements of her claim and that the medical evidence was also insufficient. OWCP afforded appellant 30 days to submit additional evidence and respond to its inquiries.

In a report dated April 5, 2011, Dr. Peter Moorten, a Board-certified radiologist and osteopath, stated his impression of a right posterior paracentral protrusion at the L3-4 level with mild effacement of the exiting L3 root on the right; a left posterior paracentral protrusion with mild effacement of the left S1 root; and a probable hemagloma of bone at the L5 level, which appeared stable.

On April 13, 2011 Dr. Surinder Mendiratta, a Board-certified internist, stated that appellant was unable to work that day due to lower back pain and that she could return to work the next day. On October 5, 2011 he stated that she was unable to work that day due to right hip pain but could return to work the next day.

On September 15, 2011 Dr. Yash K. Shah, a Board-certified radiologist, examined appellant's hip and sacroiliac joints by x-ray. He noted no acute fracture or dislocation, stating that the sacroiliac and hip joints were well maintained. Dr. Shah stated that he saw small calcifications in the pelvis, likely representing phleboliths.

In a surgical report dated January 24, 2012, Dr. Schmitt performed a right hip arthroscopy; debridement of the labrum; decompression and chondroplasty of the acetabulum; and chondroplasty of the femoral head.

In a prescription slip dated February 29, 2012, Dr. Schmitt recommended that appellant attend physical therapy two to three times a week for four weeks. He stated his diagnosis as “right hip atrophy after scope.” Dr. Schmitt also noted that appellant would be disabled from work until April 9, 2012.

In a letter dated March 21, 2012, Dr. Schmitt stated that appellant had undergone a hip arthroscopy on January 20, 2012. Appellant was expected to return to work near the end of April 2012. Dr. Schmitt noted that she had a slip, but not a fall, at work, which caused her to twist her left hip. He stated that this incident may have accounted for appellant’s labral tear to the left hip.

On March 23, 2012 appellant responded to OWCP’s inquiries. She stated that her injury occurred on February 5, 2011, but she initially assumed the pain she experienced was due to her preexisting condition, as the experience was similar. Appellant’s pain increased as time went on and that she eventually sought medical treatment. She stated that she was currently in physical therapy.

By decision dated May 17, 2012, OWCP denied appellant’s claim. It found that the medical evidence was insufficient to support her claim, because she had not submitted a physician’s rationalized medical opinion explaining how her right hip condition was causally related.

On June 4, 2012 appellant requested a telephonic hearing before an OWCP hearing representative. A hearing was held on October 17, 2012. At the hearing, appellant’s representative contended that the injury could be characterized as both a traumatic injury relating to a slip in February 2011 and as an occupational disease related to duties of her federal employment. He stated that the former related to her labral tear, whereas the latter related to fraying of the labral tear and chondromalacia. Appellant testified that she slipped in the winter 2010 and clarified that she was referring to the period from the beginning of winter in 2010 to the end of winter in 2011. She clarified that there was only one slip on February 5, 2011 and stated that nothing occurred to her in 2010 that caused an increase in her symptoms. Appellant noted that she had reported the slip to her supervisor, but did not file a claim because she thought it was merely an aggravation of her preexisting condition. She explained that she had nonwork-related neck and back problems stemming from a car accident and work-related lower lumbar strain. Appellant had been treated by nerve block injection three times per year and noted that she had been diagnosed with tendinitis of the hip, which was treated by surgery in January 2012 and used sick and annual leave to cover time away from work. She first sought treatment for her hip injury stemming from the February 5, 2011 incident on April 5, 2011. Appellant did not inform her physician on that date about her slip, because she was visiting for treatment of her back, not her hip.

In a report dated May 23, 2012, Dr. Schmitt noted that appellant sustained an injury at work on February 5, 2011. He stated that to a high degree of medical certainty the incident caused a labral right hip injury. Dr. Schmitt noted that appellant had no complaints of right hip issues prior to the incident.

By letter dated November 1, 2012, Dr. Schmitt stated that appellant had a slip at work, which caused her to twist her right hip. He reiterated that the incident caused a right hip labral tear and resulted in her need for a right hip arthroscopy to a high degree of medical certainty.

On November 12, 2012 appellant's supervisor stated that appellant had notified her of a slip on February 5, 2011 requested forms for workers' compensation and kept her aware of medical appointments.

By decision dated January 7, 2013, the hearing representative affirmed the May 17, 2012 decision. She found that appellant did not establish an injury causally related to the February 5, 2011 work incident. The hearing representative determined that the claim should be treated as a traumatic injury as appellant and her physician clearly related her right hip condition to a traumatic on February 5, 2011.

On September 26, 2013 appellant, through her attorney, requested reconsideration of OWCP's January 7, 2013 decision. He cited to several Board decisions regarding causal relationship in aggravation cases.

In a letter dated September 3, 2013, Dr. Schmitt stated that it was his opinion within a reasonable degree of medical certainty that a twisting injury sustained at work by appellant on December 1, 2010 was the cause of her arthritis of the right hip. He reviewed her medical history and noted that she had exhibited physical findings consistent with arthritic changes to the hip throughout her course of treatment.

By decision dated October 4, 2013, OWCP denied modification of the January 7, 2013 decision. It found that Dr. Schmitt's September 3, 2013 letter was insufficient to establish appellant's claim, because it contained an incorrect date of the accepted incident.

#### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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 timely filed within the applicable time limitation period of FECA, that an injury<sup>3</sup> was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

<sup>4</sup> *T.H.*, 59 ECAB 388, 393 (2008); see *Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.<sup>5</sup>

A 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.<sup>6</sup> An award of 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.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

## ANALYSIS

Appellant alleged that on February 5, 2011 she sustained a right hip injury in the performance of duty due to a slip at work. OWCP found that the medical evidence of record was insufficient to establish that her condition was causally related to this incident. The Board finds that appellant failed to meet her burden of proof.

Appellant submitted reports from Dr. Schmitt pertaining to her right hip diagnoses. In a letter dated March 21, 2012, Dr. Schmitt stated that she had a slip, but not a fall, at work, which caused her to twist her left hip. He noted that this incident may have accounted for the labral tear

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<sup>5</sup> *Id.* See *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Caralone* 41 ECAB 354, 356-57 (1989).

<sup>6</sup> See *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>7</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>8</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 156 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

<sup>9</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

<sup>10</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

to appellant's left hip. In a report dated May 23, 2012, Dr. Schmitt noted that she sustained an injury at work on February 5, 2011. He stated that appellant had no issues with her right hip prior to this incident and explained that this incident, to a high degree of medical certainty, caused a labral right hip injury. By letter dated November 1, 2012, Dr. Schmitt stated that she had a slip at work, which caused her to twist her right hip. He explained that this incident caused a right hip labral tear and resulted in appellant's need for a right hip arthroscopy to a high degree of medical certainty.

Appellant must submit medical evidence with a rationalized opinion on the causal relationship between a diagnosed condition and the identified employment factors. To establish causal relationship, a physician must provide an opinion on whether the employment incident described caused or contributed to claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rational.<sup>11</sup> Dr. Schmitt provided a firm medical diagnosis but failed to provide sufficient rationale explaining the causal relationship between the February 5, 2011 incident and appellant's right hip condition. In his May 23, 2012 report, he explained his opinion on causal relationship by stating that she had no prior right hip issues. The Board had held that an opinion that a condition is causally related because the employee was asymptomatic before the incident is sufficient, without supporting rationale to establish causal relation.<sup>12</sup> A physician must provide a narrative description of what happened on the date of the claimed traumatic event so as to determine whether he or she is relying on a proper history of injury.<sup>13</sup> Medical conclusions unsupported by rationale are of little probative value and are insufficient to satisfy the causal relationship element of appellant's burden of proof.<sup>14</sup>

A narrative description of the traumatic incident, accompanied by explanation as to how the incident physiologically resulted in the claimed condition, must also be accompanied by an accurate medical history.<sup>15</sup> In this case, Dr. Schmitt provided conflicting dates of injury and bodily members injured. His letter of March 21, 2012 referenced a left labral tear, whereas his other reports diagnose a right labral tear. In a letter dated September 3, 2013, Dr. Schmitt stated that it was his opinion that a twisting injury sustained at work by appellant on December 1, 2010 was the cause of her arthritis of the right hip. He reviewed her medical history and noted that she had exhibited physical findings consistent with arthritic changes to the hip throughout her course of treatment. This letter contains an inconsistent date of injury, as it states that the traumatic incident occurred on December 1, 2010 contrary to appellant's assertion that the traumatic incident occurred on February 5, 2011. Medical conclusions based on inaccurate or incomplete

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<sup>11</sup> See also *H.D.*, Docket No. 07-1026 (issued October 1, 2007); See *John W. Montoya*, 54 ECAB 306, 309 (2003).

<sup>12</sup> See *John F. Glynn*, 53 ECAB 562 (2002).

<sup>13</sup> See *John W. Montoya*, see *supra* note 11.

<sup>14</sup> *Ceferino L. Gonzalez*, 32 ECAB 1591, 1594 (1981).

<sup>15</sup> See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions). See *James A. Wyrick*, 31 ECAB 1805, 1807 (1980) (the physician's report was entitled to little probative value because the history was both inaccurate and incomplete).

histories are of little probative value and are insufficient to satisfy her burden of proof for causal relationship.<sup>16</sup> Because appellant failed to submit a well-reasoned medical opinion from Dr. Schmitt explaining how the incident that occurred on February 5, 2011 caused or contributed to her right hip condition, his reports do not suffice to meet her burden of proof for the critical element of causal relationship.

Appellant submitted reports from Drs. Moorten, Mendiratta, and Shah containing diagnostic results and recommendations not to work. However, these reports did not contain opinions as to the cause of her condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>17</sup> As these reports contained no such opinion, they are not sufficient to meet appellant's burden of proof to establish that she sustained an employment-related injury.

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 her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>18</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant did not submit such evidence.

OWCP advised appellant that it was her responsibility to provide a comprehensive medical report describing her symptoms, test results, diagnoses, course of treatment and a rationalized medical opinion regarding the cause of her condition. Appellant failed to submit sufficient medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how her claimed right hip condition was caused or aggravated by the February 5, 2011 employment incident, she has not met her burden of proof to establish that she sustained an injury in the performance of duty.

On appeal, appellant's attorney argues that OWCP's decision was contrary to fact and law. For the reasons stated above, the Board finds that appellant has not met her 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established that she sustained a right hip condition causally related to the February 5, 2011 employment incident.

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<sup>16</sup> *Id.*

<sup>17</sup> See *Michael E. Smith*, 50 ECAB at 316 n.8 (1999).

<sup>18</sup> See *D.U.*, Docket No. 10-144 (issued July 27, 2010); *D.I.*, 59 ECAB 158, 162 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 4, 2013 is affirmed.

Issued: April 15, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board