

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

S.N., Appellant	)	
	)	
and	)	<b>Docket No. 13-1209</b>
	)	<b>Issued: August 1, 2014</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Visalia, CA, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA HOWARD FITZGERALD, Acting Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On April 22, 2013 appellant filed a timely appeal from the November 20, 2012 and March 8, 2013 merit decisions 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 the appeal.

**ISSUES**

The issues are: (1) whether appellant established that he was disabled from September 10 to 12, 2012; and (2) whether OWCP abused its discretion by refusing to reopen appellant's case for further merit review under 5 U.S.C. § 8128(a).

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

## **FACTUAL HISTORY**

On July 19, 2011 appellant, then a 60-year-old mail carrier, filed a claim for occupational disease alleging that her left hip condition was due to entering and exiting from her postal vehicle over 30 years. She did not stop work.

Appellant was treated by Dr. Thomas E. Daglish, a family practitioner. In an August 26, 2011 report, Dr. Daglish advised that she was seen on March 28, 2001 for complaint of left hip pain.<sup>2</sup> He noted a prior history of an L2-3 herniated disc. Dr. Daglish stated that examination revealed significant degenerative arthritis of the left hip. When first seen on June 28, 2011 appellant advised him of consultations with two orthopedic specialists, who recommended a total hip arthroplasty. Dr. Daglish agreed that her only treatment was surgery. He reviewed a statement of appellant's work duties and activities and stated: "There is no medical explanation as to why [appellant's] work activities would have created degenerative arthritis in one hip and not the other; other than her claim that she gets in and out of her delivery vehicle on the right side repetitively. This would not necessarily medically justify why one hip would be involved and not the other. Certainly, the existence of her degenerative arthritis would be aggravated by these activities."

A March 29, 2011 x-ray obtained by Dr. Richard Cluston, a Board-certified radiologist, found moderate degenerative changes of the left hip, with bony osteophytes of the acetabulum, both the roof and inferior aspects.

In a September 8, 2011 decision, OWCP denied appellant's claim. It found that the medical evidence was not sufficient to establish the causal relationship of her left hip condition to the repetitive work activities she performed as a mail carrier.

On October 25, 2011 appellant requested reconsideration. In a September 28, 2011 note, Dr. Daglish described her duties, including pivoting in and out from her motor vehicle 400 times a day, climbing stairs, delivering packages weighing up to 75 pounds, pushing parcel tubs, reaching, bending and twisting. He advised that such activities would possibly aggravate appellant's hip problem, particularly when performed over a 30-year period.

In a September 12, 2011 note, Dr. Burton L. Redd, a Board-certified orthopedic surgeon, stated that appellant had osteoarthritis of her left hip. He noted that she worked for 30 years as a mail carrier, a job that was aggravating her hip and may have contributed to her hip arthritis.

On January 17, 2012 OWCP accepted appellant's claim for aggravation of localized unspecified bilateral osteoarthritis of the pelvic region and thigh. Appellant received wage-loss compensation for intermittent periods of disability.

On September 10, 2012 appellant filed a claim for compensation from September 10 to 12, 2012. She submitted a form note from Dr. Daglish, who listed that she was under his care on September 10 to 11, 2012 and could return to work on September 12, 2012. The employing

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<sup>2</sup> Appellant submitted an undated attending physician's report from Dr. Daglish, who check marked a form box supporting causal relation. Dr. Daglish listed the repetitive nature of her work activity.

establishment noted that appellant was on leave without pay on September 10 and 11, 2012 and had returned to work as of September 12, 2012.

In response to a request by OWCP for additional medical evidence to support her disability for work on the dates claimed, appellant submitted a September 10, 2012 treatment note from Dr. Daghish, who advised that she fell the previous day on a sidewalk when her left hip gave way, landing on her hip. Dr. Daghish provided findings on physical examination, noting that she had significant pain with any movement of the left hip but no bruising. He noted significant limitations of external and internal rotation and flexion. Dr. Daghish diagnosed primary localized osteoarthritis of the pelvic region and thigh. He advised that appellant was given medication by injection and was taken off work for the next two days.

On October 26, 2012 appellant advised OWCP that her left hip gave way while she was delivering mail and she landed on the hip. She sought wage-loss compensation for the two days she missed work.

In a November 20, 2012 decision, OWCP denied appellant's claim for wage loss on September 10 and 11, 2012. It noted that the treatment note from Dr. Daghish identified a new factor as causing disability when she fell on September 9, 2012. OWCP found that, as the medical evidence implicated a new work injury, compensation was not payable under the present claim number.

On November 29, 2012 appellant informed OWCP that she fell at home on a sidewalk, not while she was at work. She was advised to follow the appeal rights attached to the recent decision.

On December 10, 2012 appellant requested reconsideration and resubmitted a copy of the September 10, 2012 treatment note of Dr. Daghish.

In a March 8, 2013 decision, OWCP denied appellant's reconsideration request. It found that the evidence submitted was repetitious of that previously of record and considered in the November 12, 2012 decision.

### **LEGAL PRECEDENT**

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.<sup>3</sup> Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.<sup>4</sup> The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.<sup>5</sup> To meet this burden, a claimant must submit rationalized medical evidence from a

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<sup>3</sup> See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>4</sup> *Id.*

<sup>5</sup> See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

physician, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.<sup>6</sup>

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>7</sup>

The general rule regarding consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause that is attributable to the employee's own intentional conduct.<sup>8</sup> The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.<sup>9</sup> Such injury is compensable whether it is an aggravation of the original injury or a new and distinct injury.<sup>10</sup> With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation, to arise out of and in the course of employment and is compensable.<sup>11</sup>

### ANALYSIS

By decision dated January 17, 2012, OWCP accepted appellant's claim for an aggravation of localized unspecified bilateral osteoarthritis of the pelvic region and thigh. With regard to her claim of disability on September 10 and 11, 2012, the Board finds that the case is not in posture for decision.

On September 14, 2012 appellant filed a Form CA-7 claim for wage-loss compensation for September 10 and 11, 2012. She submitted a note from Dr. Daghish, advising that she was under his care from September 10 to 11, 2012 and that she would be able to return to work on September 12, 2012. The note did not provide any discussion of the nature of appellant's treatment on the listed dates or address how her treatment related to the accepted aggravation of bilateral osteoarthritis to her pelvic region and thigh.

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<sup>6</sup> C.S., Docket No. 08-2218 (issued August 7, 2009); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>7</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>8</sup> *Albert F. Ranieri*, 55 ECAB 598, 602 (2004).

<sup>9</sup> *Carlos A. Marrero*, 50 ECAB 117, 119-120 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01(2005).

<sup>10</sup> *S.M.*, 58 ECAB 166 (2006); citing A. Larson, *The Law of Workers' Compensation* § 10.01 (2004).

<sup>11</sup> *Kathy A. Kelley*, 55 ECAB 206, 210 (2004); *Howard S. Wiley*, 7 ECAB 126, 127 (1954).

In a September 10, 2012 progress note, however, Dr. Daglish reported a history that appellant: “Fell yesterday walking on [sidewalk] and left hip gave out and landed on hip. Had gradually increasing pain. Awoke several times during night until 2 a.m. and could not get back to work. No bruising. No reason for falling other than hip giving out.” He noted that she had pain with any movement of her left hip, limitation of external rotation and ‘no’ 20 degrees of internal rotation and flexion of the left hip was limited to 25 degrees. Dr. Daglish provided an injection, noting “I will take her off work the next [two] days.”

With respect to consequential injuries, the Board has stated that, where the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment unless it is the result of an independent intervening cause.<sup>12</sup> The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of the accepted primary injury.<sup>13</sup>

As noted, appellant’s claim was accepted by OWCP for an aggravation of bilateral osteoarthritis of her pelvic and thigh region. She fell on September 9, 2012. The reports of Dr. Daglish reflect that he treated appellant on September 10, 2012 and advised that he held her off work for two days following an injection to the left hip and that she could return to work on September 12, 2012.

Disability caused by the injury of a fall attributable to appellant’s accepted bilateral condition, could be compensable under her accepted claim regardless of whether it occurred at work or at home. In *Howard S. Wiley*, the Board denied compensation for an alleged consequential injury that occurred at the employee’s home on the grounds that he did not provide evidence that it was the disability residual to the accepted injury which caused him to slip while leaving home. The latter accident was completely independent of the earlier work-related injury.<sup>14</sup> Unlike *Wiley*, appellant attributed her disability on September 10 and 11, 2012 to a fall on September 9, 2011 that was a consequence of residuals due to her accepted bilateral condition. She provided medical evidence that it was her accepted condition that caused her to fall to the sidewalk.

OWCP denied appellant’s claim on the grounds that she alleged a new injury. It did not address the consequential aspect of her claim. The case will be remanded for further adjudication of appellant’s claim of consequential injury. Following such further development of the medical evidence as OWCP deems necessary, it should issue a merit decision on her claim for compensation.<sup>15</sup>

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<sup>12</sup> *Charles W. Downey*, 54 ECAB 421 (2003).

<sup>13</sup> See *S.M.*, *supra* note 10.

<sup>14</sup> *Howard S. Wiley*, *supra* note 11.

<sup>15</sup> Given the Board’s disposition of issue one, issue two is moot.

**CONCLUSION**

The Board finds this case is not in posture for decision as to appellant's entitlement to compensation for September 10 and 11, 2012.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 8, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for proceedings consistent with this decision of the Board.

Issued: August 1, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

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

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