

In 2012 OWCP accepted appellant's occupational disease claim for aggravation of unspecified osteoarthritis of the left pelvis/thigh. It observed that the medical evidence had often noted the work factors of walking, standing, and climbing stairs.

Appellant filed a claim for wage-loss compensation beginning October 2, 2010. The employing establishment indicated, however, that appellant took leave without pay beginning October 30, 2010.

OWCP referred appellant, together with the medical record and a statement of accepted facts, to Dr. Michael E. Holda, a Board-certified orthopedic surgeon, for a second opinion, who opined that work factors such as walking and delivering mail would symptomatically exacerbate appellant's degenerative disease, but it was difficult to say whether these factors would have aggravated the pathology, that is, whether they would have increased the arthritis. Dr. Holda noted that people had similar arthritic hip conditions without a history of constant walking or constant activity. He concluded that appellant's degenerative hip disease was preexisting due to aging and was only symptomatically exacerbated by her work.

In the prior appeal of this case,² the Board found that Dr. Holda did not directly address the issue of disability for work beginning in October 2010. Further, the statement of accepted facts, upon which Dr. Holda based his opinion, incorrectly noted that appellant's occupational disease claim involving severe arthritic changes to her left hip "has been denied at this time." OWCP had accepted appellant's occupational disease claim for aggravation of unspecified osteoarthritis of the left pelvis/thigh. The Board remanded the case for a revised statement of accepted facts and a second opinion that would resolve whether appellant's occupational left hip injury caused disability for work beginning October 2, 2010.³

OWCP subsequently revised its statement of accepted facts to reflect that it had accepted appellant's injury claim for an aggravation of osteoarthritis of the left pelvis/thigh. After noting appellant's other injury claims, OWCP added that she "has a concurrent degenerative left hip condition."

OWCP referred appellant, together with the medical record and the statement of accepted facts, to Dr. Robert D. Travis, a Board-certified orthopedic surgeon, who related the history of present illness, reviewed the medical record and the statement of accepted facts, and described his findings on physical examination. Dr. Travis diagnosed degenerative arthritis of the bilateral hips, left significantly more symptomatic than the right. His prognosis was for continued progression with increased pain and decreased functional level of the left hip leading to total hip replacement.

Dr. Travis then offered brief answers to the questions OWCP posed. He stated that appellant's left hip condition had not resolved. Dr. Travis stated, however, that he did not

² Docket No. 13-676 (issued June 11, 2013).

³ *Id.*

believe that her condition was related to a fall at work when she slipped down steps in 1992.⁴ He stated, “I believe her condition is degenerative arthritis, and this is a normal age-related progression.” Dr. Travis added that appellant’s condition was related to progression of degenerative arthritis, not an aggravation, and he did not believe there was an aggravation in her condition. He added that appellant’s condition was progressive, based on normal aging and unrelated to any incident at work.

With respect to whether appellant’s left hip injury caused total disability beginning in October 2010, Dr. Travis replied:

“I do not believe that [appellant] is completely disabled from work. I believe that she would be able to work with a restriction of no steps. I do believe as the arthritis progresses, she will be disabled from her job as a postal worker doing deliveries, but this would be related to the degenerative condition, and not to a work[-]related injury.”

Dr. Travis added that appellant’s arthritis had progressed to the point that she could not perform her duties described in the statement of accepted facts. He stated, “Again, this is related to a degenerative condition.”

In a decision dated October 2, 2013, OWCP denied appellant’s claim for wage-loss compensation beginning in October 2010. It found that Dr. Travis provided rationale to establish that the claimed disability for work was due to the aging process and not to employment factors.

Dr. Laran Lerner, the attending osteopath specializing in physical medicine and rehabilitation, noted a history of a fall in 1992 that injured appellant’s left hip. He noted that the arthritis in her hip was very much aggravated by prolonged walking and stair climbing. The aggravation and increase in pain to her left hip was due, in his opinion, to employment factors, including delivering mail while walking for several hours a day, climbing stairs, and carrying the extra weight of her mail carrier bag. Dr. Lerner explained that arthritis was not purely an age-related phenomenon. Osteoarthritis, which was the most common type of arthritis, often developed from a previous joint injury. Dr. Lerner stated, “Her arthritis could have very well developed due to the previous injury to her left hip.” He repeated that employment factors definitely aggravated appellant’s hip arthritis.

In a decision dated May 21, 2014, an OWCP hearing representative affirmed the denial of appellant’s disability claim. The hearing representative found that there was no probative medical evidence that appellant became totally disabled for work in October 2010 due to her 1992 injury.

⁴ On her occupational disease claim form, appellant had indicated that she first injured her left hip in 1992. The record indicates that on February 18, 1992 she sustained a traumatic injury in the performance of duty, which OWCP accepted for a soft-tissue injury of the left hip and left shoulder. Appellant received continuation of pay and returned to work on February 23, 1992. According to OWCP, the medical evidence supported that she fully recovered from the effects of the injury and could return to regular duty. No further medical evidence was received in that case since February 1992. The case was administratively closed. OWCP File No. xxxxxx859.

On appeal, appellant's representative objects to OWCP's use of the QTC Corporation to schedule medical examinations. He argues there can be no real neutrality when all the physicians are performing examinations "for the same employer." Appellant's representative objected to physicians who concluded that appellant's osteoarthritis was purely age related. He describes as utter nonsense the finding of Dr. Holda that employment factors only symptomatically exacerbated the arthritis without temporary or permanent aggravation. He also described as utter nonsense the restrictions Dr. Holda imposed after finding no occupational relationship beyond symptomatic exacerbation. Appellant's representative argues that the opinion of OWCP's referral physician lacked medical rationale. He clarified that the date of the claimed disability was October 30, 2010, not October 2, 2010. Appellant's representative also noted that OWCP hearing representative referred to someone named Mr. Daniels. He stated, "we have no clue who Mr. Daniels might be." Appellant's representative also argues that OWCP has the burden of proof to deny a previously approved claim. He asks the Board to vacate OWCP's decision and award appropriate benefits or take appropriate action.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁵ A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence,⁶ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁷

It is well established that when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for periods of disability related to the aggravation.⁸

Although the claimant has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence.⁹ Once OWCP starts to procure medical opinion, it must do a complete job.¹⁰ It has the responsibility to obtain from its referral physician an evaluation that will resolve the issue involved in the case.¹¹

⁵ 5 U.S.C. § 8102(a).

⁶ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *James L. Hearn*, 29 ECAB 278 (1978).

⁹ *William J. Cantrell*, 34 ECAB 1233 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹⁰ *William N. Saathoff*, 8 ECAB 769 (1956).

¹¹ *Mae Z. Hackett*, 34 ECAB 1421, 1426 (1983); *Richard W. Kinder*, 32 ECAB 863, 866 (1981) (noting that the report of OWCP referral physician did not resolve the issue in the case).

ANALYSIS

Appellant filed an occupational disease claim. Although she mentioned traumatic work injuries in the 1990s, she attributed the severe arthritic changes in her left hip to the physical demands of her position as a letter carrier. OWCP accepted appellant's occupational disease claim for aggravation of unspecified osteoarthritis of the left pelvis/thigh. In so doing, it acknowledged that the medical evidence of record often noted the work factors of walking, standing, and climbing stairs.

The issue in this case is whether appellant's currently accepted condition, employment-related aggravation of left hip osteoarthritis, caused total disability for work beginning October 30, 2010, when appellant began taking leave without pay.

OWCP referred appellant, together with the medical record and the statement of accepted facts, to Dr. Travis, an orthopedic surgeon who directly but briefly answered the questions posed by OWCP. It was his opinion that appellant's current left hip condition was the result of a normal age-related progression, but he did not explain how he came to this conclusion. He did not discuss how the record demonstrated this or how one could distinguish a purely age-related progression from an aggravation caused by the physical demands of appellant's position over time. He offered no medical rationale to show that his opinion was sound and logical and supported by the evidence. Medical conclusions unsupported by rationale are of little probative value.¹²

When OWCP asked Dr. Travis whether appellant's left hip injury had caused total disability beginning in October 2010, he answered in the present tense: "I do not believe that [appellant] is completely disabled from work. I believe that she would be able to work with a restriction of no steps." Thus, Dr. Travis was not responsive to the question posed.

The Board, therefore, again finds that further development of the medical evidence is warranted. Having undertaken development of the medical opinion evidence by referring appellant to a second-opinion physician, OWCP had an obligation to do a complete job and obtain an evaluation that would resolve the issue involved in this case. The Board will set aside OWCP's May 21, 2014 decision and remand the case for further development of the medical evidence and a *de novo* decision on appellant's claim for wage-loss compensation beginning October 30, 2010.

Appellant's representative objects to OWCP's use of the QTC Corporation to schedule medical examinations, arguing there can be no real neutrality when all the physicians are performing examinations "for the same employer." QTC Medical Services does not employ physicians. It is merely a private contractor that OWCP uses to schedule medical appointments. In the case of *R.C.*, Docket No. 12-468 (issued October 5, 2012), which involved the selection of

¹² *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

second-opinion and impartial referee physicians, the Board explained how the selection process works:

“[T]he Director has delegated authority to each district OWCP for selection of the referee physician by use of the Medical Management application within the Integrated Federal Employees Compensation System (iFECS). This application contains the names of physicians who are Board-certified in over 30 medical specialties for use as referees within appropriate geographical areas. The Medical Management Application in iFECS replaces the prior Physician Directory System (PDS) method of appointment. It provides for a rotation among physicians from the American Board of Medical Specialties, including the medical boards of the American Medical Association, and those physicians Board-certified with the American Osteopathic Association.

“Selection of the referee physician is made through use of the application by a medical scheduler. The claims examiner may not dictate the physician to serve as the referee examiner. The medical scheduler imputes the claim number into the application, from which the claimant’s home zip code is loaded. The scheduler chooses the type of examination to be performed (second opinion or impartial referee) and the applicable medical specialty. The next physician in the roster appears on the screen and remains until an appointment is scheduled or the physician is bypassed. If the physician agrees to the appointment, the date and time are entered into the application. Upon entry of the appointment information, the application prompts the medical scheduler to prepare a Form ME023, appointment notification report for imaging into the case file. Once an appointment with a medical referee is scheduled the claimant and any authorized representative is to be notified.” (Footnotes omitted.)

Upholding OWCP’s use of QTC to schedule medical appointments, the Board held in *R.C.* quoted above that the fact OWCP had contracted with QTC to provide medical referral services for both second-opinion and impartial referee examination was not sufficient justification for objection to the physicians selected. As the process describes, QTC’s use of the Medical Management Application prevents OWCP claims examiner from dictating which physicians are selected to perform medical evaluations. The process actually enhances the neutrality and integrity of the selection process.

Appellant’s representative also objects to several of Dr. Holda’s findings, but his opinion is no longer central to this case. On the prior appeal, the Board noted some problems with his report and remanded the case for further development of the medical evidence. OWCP then referred appellant to Dr. Travis, whose opinion is now central to the case.

The Board has found some deficiencies in his opinion as well, including the lack of sound medical reasoning, and for that reason further development is again warranted.

OWCP hearing representative’s reference to a Mr. Daniels and to the Office of Personnel Management retirement benefits is harmless error.

To be clear, OWCP is not denying a previously approved claim. It accepted an occupational aggravation of unspecified osteoarthritis of the left pelvis/thigh. Appellant, in turn, is claiming that the accepted medical condition caused disability for work beginning October 30, 2010. Appellant who, therefore, bears the burden of proof to establish that the accepted medical condition entitles her to compensation for wage loss beginning that date. As the Board noted earlier, a claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence, including that he or she sustained an injury in the performance of duty and that any specific disability for work for which he or she claims compensation is causally related to that employment injury.

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the medical evidence is warranted.

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: December 4, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board