

FACTUAL HISTORY

On July 18, 2008 OWCP accepted that appellant, then a 60-year-old consumer safety inspector, sustained employment-related aggravation of avascular necrosis of the hip. Appellant lost no time from work due to the accepted condition.

On July 29, 2009 appellant underwent a right total hip arthroplasty. Preoperative and postoperative diagnoses were right hip avascular necrosis. In a June 13, 2010 report, Dr. William N. Grant, a Board-certified internist, noted that appellant had a right total hip replacement in July 2009 and had continued constant pain, numbness, and weakness to the right inguinal area. He diagnosed aggravation of hip avascular necrosis.

In November 2010, OWCP referred appellant to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether appellant continued to have residual to his accepted condition. In a December 29, 2010 report, Dr. Swartz noted his review of the statement of accepted facts and medical record and appellant's complaint of continued pain following a right total hip replacement. He provided physical examination findings and advised that appellant's occupation temporarily aggravated the preexisting avascular necrosis in the right hip. Dr. Swartz recommended further diagnostic testing to evaluate appellant's right hip condition. A February 2, 2011 nuclear medicine bone scan demonstrated the right hip prosthesis with no associated hyperemia and resolving postsurgical changes. Infection and loosening were thought to be highly unlikely. Bilateral hip x-rays done on February 8, 2011 demonstrated that the right hip replacement was in normal anatomic alignment with an unremarkable left hip and remainder of the bony pelvis within normal limits. Additional laboratory studies were completed on March 3, 2011. In March 21, 2011 reports, Dr. Swartz reviewed the bone scan, x-ray, and laboratory studies. He indicated that there was no clinical explanation for appellant's pain in the right hip. Dr. Swartz advised that appellant had permanent physical restrictions. On April 3, 2011 he advised that there was no evidence that appellant had employment-related residuals of the right hip. Dr. Swartz noted normal diagnostic testing of the prosthesis and found the temporary employment-related aggravation of avascular necrosis had resolved as of the date of the hip replacement surgery.

Dr. Amir Friedman, who practices pain management, in a September 15, 2011 report, noted the history of injury and appellant's complaint of right hip pain. He provided physical examination findings of decreased bilateral hip range of motion with normal strength and normal sensory examinations. Dr. Friedman diagnosed status post right hip total arthroplasty and recommended a functional capacity evaluation. He opined that appellant's condition was due to the work injury.

OWCP determined that a conflict in medical evidence had been created between Dr. Friedman and Dr. Swartz regarding whether appellant's accepted hip condition had resolved. In July 2012, Dr. Eric Novack, a Board-certified orthopedic surgeon, was requested to perform an impartial medical evaluation. He noted his review of the conflict statement, statement of accepted facts, and medical record. In his August 27, 2012 report, Dr. Novack diagnosed a temporary work-related exacerbation of preexisting avascular necrosis or osteonecrosis of the right hip found no residuals of the temporary aggravation. He explained that the record documented significant preexisting, right hip disease which necessitated appellant's total hip

arthroplasty. Dr. Novack opined that there was no ongoing residuals from the work injury. He concluded that, based on his review of the complete record, and speaking with and examining appellant, it was not unreasonable to consider that maximum medical improvement was reached at the time of the total hip arthroplasty on July 29, 2009.

On March 8, 2013 OWCP issued a notice of proposed termination of medical benefits, finding that, based on Dr. Novack's opinion, appellant no longer had residuals of the accepted injury that required medical treatment. Appellant, through his attorney, disagreed with the proposed termination. By decision dated July 23, 2013, OWCP finalized the termination of medical benefits.

Appellant, through his attorney, timely requested a hearing. At the hearing, held on January 3, 2014, counsel disagreed that the aggravation ended at the time of the hip replacement surgery because appellant had a prosthesis that will need further care. Appellant testified that he is somewhat limited in mobility and occasionally will need medical care.

In a March 21, 2014 decision, an OWCP hearing representative affirmed the July 23, 2013 decision.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment. Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.³

Section 8123(a) of FECA provides that, if there is 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.⁴ The implementing regulations states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. 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.⁵ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of

³ *Fred Simpson*, 53 ECAB 768 (2002).

⁴ 5 U.S.C. § 8123(a); *see Y.A.*, 59 ECAB 701 (2008).

⁵ 20 C.F.R. § 10.321.

resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁶

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's medical benefits on July 23, 2013. OWCP determined that a conflict in medical evidence had been created between Dr. Friedman, the attending physician, and Dr. Swartz, OWCP referral physician, regarding whether appellant had continuing residuals of the accepted aggravation of the right hip avascular necrosis. It selected Dr. Novack for the impartial medical evaluation.

In a comprehensive report dated August 27, 2012, Dr. Novack noted his review of the conflict statement, statement of accepted facts, and medical record. He indicated that appellant sustained a temporary work-related exacerbation of preexisting avascular necrosis or osteonecrosis of the right hip and found that appellant did not have residuals of the temporary aggravation. Dr. Novack concluded that, based on his review of the complete record, and speaking with and examining appellant, it was not unreasonable to consider that maximum medical improvement was reached at the time of the total hip arthroplasty on July 29, 2009. Appellant submitted no additional medical evidence. As Dr. Novack provided a well-rationalized opinion that appellant had no continuing residuals of the accepted aggravation of right hip avascular necrosis, his opinion is entitled to the special weight accorded an impartial examiner, and constitutes the weight of the medical evidence regarding whether appellant had a continuing need for medical treatment due to the accepted condition.⁷ The Board finds that OWCP properly terminated appellant's medical benefits.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's medical benefits on July 23, 2013 on the grounds that the accepted aggravation of right hip avascular necrosis had resolved with no residuals.

⁶ V.G., 59 ECAB 635 (2008).

⁷ *Supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the March 21, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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