

FACTUAL HISTORY

This case has previously been before the Board.² On October 7, 2011 the Board set aside OWCP's August 4, 2010 nonmerit decision denying appellant's June 23, 2010 request for reconsideration. The Board directed OWCP to conduct a merit review and issue an appropriate decision.³ In a decision dated August 15, 2012, the Board set aside OWCP's February 13, 2012 decision, dated and remanded the case for further medical development. The Board found a conflict in medical opinion. Dr. Pietro Seni, an orthopedic surgeon and OWCP referral physician, diagnosed severe degenerative left hip osteoarthritis and concluded that appellant had a preexisting arthritic condition, which was temporarily aggravated by the January 27, 2004 injury. Dr. Suzanne Croteau, an osteopath and appellant's treating physician, diagnosed left piriformis and hip strains and opined that the January 27, 2004 fall caused an injury to the left hip and piriformis muscle and that work factors contributed to the development of erosive osteoarthritis. The Board directed OWCP to refer appellant to a Board-certified specialist for a referee examination.⁴ The findings contained in the Board's prior decisions are incorporated by reference.

OWCP referred appellant to Dr. Alan R. Kohlhaas, a Board-certified orthopedic surgeon. In an April 10, 2013, report, Dr. Kohlhaas reviewed the record, including the history of her work injury and a statement of accepted facts. Appellant's history was significant for left hip replacement performed on December 28, 2006 and a 2007 right hip replacement. Examination revealed ambulation without difficulty. Range of motion of both hips showed internal rotation of 15 degrees, external rotation of 45 degrees, flexion was to 100 degrees and symmetrical with minimal discomfort. Dr. Kohlhaas diagnosed osteoarthritis of both hips requiring a total hip replacement approximately a year apart. He opined that appellant slipped and fell on ice on January 27, 2004 and quickly returned to work. Approximately 10 months after the injury on November 18, 2004 an x-ray revealed severe loss of the joint space in the weight-bearing portion of the hip, which could not have developed in the short period of time from the fall in January 2004, to the November 2004, x-ray. Dr. Kohlhaas opined that appellant sustained a temporary aggravation (exacerbation) in her symptoms that appeared to be self-limiting. Appellant was able to resume her activities, including skiing in Colorado. Dr. Kohlhaas noted that the degenerative arthritis of the left hip continued to progress and, on September 21, 2005, x-rays showed additional loss of joint space, along with some cystic formation for which appellant underwent left hip total replacement on December 28, 2006.

² On January 27, 2004 appellant, a logistics management specialist, slipped and fell on ice at work. OWCP accepted her claim for back, face, scalp and neck contusions; OWCP File No. xxxxxx160. On September 15, 2006 appellant filed an occupational disease claim for left hip joint pain due to her temporary assignment in Germany for the period April 27 to June 9, 2005, OWCP File No. xxxxxx470. On September 9, 2008 she filed another occupational disease claim, alleging that her left hip joint symptoms were exacerbated by physical therapy. On December 15, 2009 OWCP expanded the claim to include temporary aggravation of preexisting left hip osteoarthritis. A hearing representative affirmed this decision on April 27, 2010. Appellant underwent left hip replacement surgery on December 28, 2006 and right hip replacement in 2007, which were not authorized by OWCP.

³ Docket No. 11-842 (issued October 7, 2011).

⁴ Docket No. 12-862 (issued August 15, 2012).

Dr. Kohlhaas noted that a right hip replacement was performed approximately one year later for the same condition. He found that appellant's January 27, 2004 fall did not cause the degenerative changes, which were preexisting. The arthritis in the hips slowly continued to progress with time. Dr. Kohlhaas noted that after appellant's fall, she had significant improvement and was able to return to a fairly active life style including skiing. He stated that the temporary aggravation ceased by the time of her skiing trip in March 2005. Dr. Kohlhaas opined that the December 28, 2006 left hip replacement surgery was not due to the progression of her left hip osteoarthritis that preexisted her fall on January 27, 2004. He also determined that appellant's condition could be due to the femur acetabulum impingement that resulted in both hips requiring a total hip replacement and believed that this was the most likely cause unrelated to her two claims.

In an April 29, 2013 decision, OWCP denied modification of the decision dated April 27, 2010. It found that the weight of the evidence rested with Dr. Kohlhaas, who found that appellant sustained a temporary aggravation of left hip osteoarthritis, which ceased by the time of her skiing trip in March 2005.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.⁶

⁵ See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989); see *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury).

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.⁷

ANALYSIS

On appeal, appellant asserts that she developed a persistent left hip piriformis muscle condition causally related to her January 27, 2004 injury, her duties and working long hours in Germany in 2005 and physical therapy in 2005.

In this case, OWCP accepted appellant's traumatic injury claim for back, face, scalp and neck contusions, OWCP File No. xxxxxx160. On September 15, 2006 appellant filed an occupational disease claim alleging that she sustained severe left hip joint pain as a result of her temporary job assignment in Germany at Rhein-Main Air Base for the period April 27 to June 9, 2005, OWCP File No. xxxxxx470 and on September 9, 2008 she alleged that her left hip joint symptoms were exacerbated by the manual hip extractions administered during five sessions of physical therapy in and around September 2005. These cases were merged and OWCP expanded appellant's claim to include temporary aggravation of preexisting left hip osteoarthritis.

Appellant's claim was appealed to the Board and on August 15, 2012, the Board reviewed the medical evidence and determined that a conflict existed in the medical evidence between the second opinion physician, Dr. Seni, who diagnosed appellant with preexisting left hip osteoarthritis on the basis of November 2004 x-rays. Dr. Seni opined that appellant's fall on January 27, 2004 temporarily aggravated this condition but the trauma sustained was insufficient to produce permanent and irreversible anatomical changes and Dr. Croteau, appellant's treating physician, who opined that appellant sustained left hip and piriformis muscle injuries as a result of the January 27, 2004 fall and that job-related weight-bearing activities and driving in Germany precipitated osteoarthritis and inflamed the piriformis muscle. She maintained that appellant did not have a prior history of left hip osteoarthritis before the January 27, 2004 injury. As there was a conflict in the medical opinion evidence, OWCP properly referred appellant for an impartial medical examination by Dr. Kohlhaas, a Board-certified orthopedist.⁸

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ 5 U.S.C. § 8123(a), in pertinent part, provides: "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."

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁹

In his April 10, 2013 report, Dr. Kohlhaas reviewed the case record, the history of the work injury and a statement of accepted facts. He examined appellant thoroughly and related his clinical findings. Dr. Kohlhaas noted examination revealed ambulation without difficulty with good range of motion of both hips with minimal discomfort. He diagnosed osteoarthritis of both hips requiring a total hip replacement approximately a year apart. Dr. Kohlhaas opined that appellant slipped and fell on ice on January 27, 2004 and subsequently a November 18, 2004 x-ray revealed severe loss of the joint space in the weight-bearing portion of the hip. He opined that this condition could not have developed in the short period of time from the fall in January 2004 to the November 2004 x-ray. Dr. Kohlhaas advised that appellant had a temporary aggravation in her symptoms that appeared to be self-limiting and she was able to resume her normal activities. He noted that the degenerative arthritis of the left hip continued to progress and on September 21, 2005 the x-rays showed additional loss of joint space, along with some cystic formation for which she had the left hip total replacement done on December 28, 2006. Dr. Kohlhaas opined that the fall on January 27, 2004 did not cause the degenerative changes, which were preexisting and the arthritis in the hip slowly continued to progress with time, as it did on the right side. He noted that following appellant's fall she had significant improvement and was able to return to a fairly active lifestyle. Dr. Kohlhaas opined that the temporary aggravation ceased by the time of her skiing trip in March 2005. He further opined that the December 28, 2006 left hip replacement surgery was not due to the progression of appellant's left hip osteoarthritis that was preexisting to her fall on January 27, 2004. Dr. Kohlhaas opined that the most likely cause of her condition was a femur acetabulum impingement that resulted in both hips requiring a total hip replacement, which was unrelated to her two claims.

The Board finds that the opinion of Dr. Kohlhaas is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight. Dr. Kohlhaas found that appellant sustained a temporary aggravation of preexisting left hip osteoarthritis which ceased in March 2005. He reviewed the medical record and statement of accepted facts and set forth findings on physical examination. Dr. Kohlhaas determined that appellant's current conditions were not causally related to her work duties. The Board finds that his opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's denial of her claim for compensation.

On appeal, appellant asserts that she developed a left hip piriformis muscle condition causally related to the January 27, 2004 fall, aggravation of the left hip condition due to working long hours in Germany 2005 and permanent aggravation of the left hip joint while undergoing physical therapy appointments in 2005. The medical evidence does not establish that these conditions were causally related to her employment. Dr. Kohlhaas provided a well-reasoned report supporting that appellant sustained a temporary aggravation of preexisting left hip osteoarthritis which ceased in March 2005.

⁹ *Solomon Polen, supra* note 6.

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 did not meet her burden of proof to establish that her claimed conditions were causally related to her employment.

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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