

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

J.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Deptford, NJ, Employer**

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**Docket No. 15-1923
Issued: December 16, 2015**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 22, 2015 appellant, through counsel, filed a timely appeal from a July 14, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 has met his burden of proof to establish a bilateral hip condition causally related to his federal employment.

FACTUAL HISTORY

On February 12, 2014 appellant, then a 62-year-old laborer/custodian filed an occupational disease claim (Form CA-2) alleging that he had aggravated his bilateral hip degenerative joint disease as a result of his federal employment. As to his work history and

¹ 5 U.S.C. § 8101 *et seq.*

duties, he indicated in a narrative statement that he began work in 1990 and was hired as a clerk/carrier, although he performed mail handler duties. Appellant reported that he delivered mail and in 1999 he began working in maintenance. According to him, he did a lot of waxing floors, with lifting of carrier's mail, and equipment. Appellant also indicated that he worked outside, using a push mower, raking leaves, and shoveling snow.

In a report dated September 4, 2013, Dr. Mitesh Patel, Board-certified in family medicine, provided a history that appellant had chronic bilateral hip pain. He provided results on examination and indicated that x-rays showed moderate degenerative changes of the femoracetabular joint. Dr. Patel diagnosed moderate degenerative joint disease, bilateral hips. He opined that he believed "with a fair degree of medical certainty that [appellant's] hip pain certainly could have been aggravated by the nature of his job which consisted of daily extended walking for eight hours a day while pushing heavy equipment and delivering mail for over two decades." Dr. Patel reported that osteoarthritis was generally a result of excessive biomechanical load to the joints, a repetitive injury, and of genetic predisposition.

OWCP requested that appellant submit additional evidence, by letter dated May 30, 2014. It requested additional factual evidence such as activities outside federal employment and a description of the development of his condition and its symptoms. OWCP also requested a medical report with a complete history and an opinion, with supporting explanation, on causal relationship.

Appellant submitted a June 6, 2014 statement noting that after work he had to ice his hips. He indicated that he did not use a push mower at home and did not perform other activity at home that would aggravate his hip condition.

By decision dated July 1, 2014, OWCP denied the claim for compensation. It found that the medical evidence was insufficient to establish the claim.

On July 10, 2014 appellant, through counsel, requested a hearing before the Branch of Hearings and Review. A hearing was held on November 25, 2014. By decision dated January 12, 2015, a hearing representative affirmed the July 1, 2014 decision. The hearing representative found that the medical evidence was insufficient to establish the claim for compensation.

In a letter dated May 11, 2015, appellant, through counsel, requested reconsideration. He submitted an April 9, 2015 report from Dr. Robert Grossman, a Board-certified orthopedic surgeon. Dr. Grossman provided a history that appellant was seen in January with hip pain. He reported that appellant had knee replacements in 2011 and 2012 and was no longer working "on routes" at the employing establishment, and appellant related his hip pain to his job. Dr. Grossman provided results on examination and reported that appellant had severe hip osteoarthritis, right worse than left. He wrote that appellant had worked for the employing establishment in maintenance and delivery and opined that hard flooring was a significant problem with workers. Dr. Grossman reported, "While there is certainly an arthritic component to [appellant's] hips that, certainly is genetic, we do not understand the biomechanics of why certain joints fail and certain joints do not but clearly surfaces are a factor in whether your hip is going to become severely arthritic or not." He opined that "overuse for multiple years certainly

is a factor in developing arthritis of the hips and I would believe that a factor in [appellant's] hip disease is the work he did for the [employing establishment] for all those years." Dr. Grossman concluded, "I do believe that a factor in [appellant's] hip disease has to be the work surface he worked on for all those years and I believe it is directly a factor in his disease."

By decision dated July 14, 2015, OWCP reviewed the case on its merits and denied modification. It found that the medical evidence remained insufficient to establish the claim for compensation.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.²

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a 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 diagnosed condition is causally related to the employment factors identified by the claimant.³

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁴ 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 must be based on a complete factual and medical background of the claimant.⁵ Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁶

ANALYSIS

In the present case, appellant has alleged that the performance of his job duties at the employing establishment had aggravated his bilateral hip condition. The factual history indicated that he had worked several different positions at the employing establishment since 1990, including mail handling, delivery, maintenance, and custodial work. Appellant's job

² 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

³ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁴ See *Robert G. Morris*, 48 ECAB 238 (1996).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *Id.*

duties included both indoor and outdoor activity. It is his burden of proof to submit medical evidence establishing that this activity contributed to a diagnosed condition.

Appellant has submitted a September 4, 2013 report from Dr. Patel, and an April 9, 2015 report from Dr. Grossman, but for the reasons discussed below, this evidence is insufficient to meet appellant's burden of proof.

Dr. Patel opined that appellant's hip pain "certainly could have been aggravated by the nature of his job." This opinion is speculative⁷ and of diminished probative value without providing proper background and additional medical rationale. As to a medical history, Dr. Patel provides no discussion of the development of the diagnosed hip degenerative joint disease, and the factual history consists of a brief reference to walking, pushing heavy equipment, and delivering mail. He does not provide any detail regarding appellant's work history, showing he understood the specific nature and extent of the job activity at the employing establishment. Moreover, the medical rationale is limited to a brief reference to biomechanical load, repetitive injury, and genetic predisposition, without further explanation.

Dr. Grossman's April 9, 2015 report is similarly of diminished probative value. The medical history refers to knee replacements, without providing a medical history of the hip osteoarthritis. The factual history is limited to a reference of appellant working in maintenance and delivery, with no discussion of specific work duties and the period of time such duties were performed. As to medical rationale, Dr. Grossman identifies hard flooring and "overuse" without further explanation. He opines, for example, that hard flooring is a problem for workers, but does not discuss appellant's specific work history and clearly explain how this affected appellant's hip condition. Dr. Grossman acknowledges a genetic factor in the development of the diagnosed hip condition, but does not explain exactly how, and to what extent, work had aggravated the condition.

The Board finds that appellant did not meet his burden of proof in this case. On appeal, appellant's counsel argues that the report of Dr. Grossman is sufficient to establish the claim. For the reasons discussed, the Board finds that the medical evidence is of diminished probative value.

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 his burden of proof to establish a bilateral hip condition as causally related to his federal employment.

⁷ Medical opinions that a condition "could be" causally related are speculative and therefore of diminished probative value. See *Kathy A. Kelley*, 55 ECAB 206, 211 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 14, 2015 is affirmed.

Issued: December 16, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board