

sharp pain in his groin, going up into his hip on the right side while in the performance of duty. He stopped work on that date.

In a September 28, 2012 report, Dr. Gus Katsigiorgis, an orthopedic surgeon and osteopath, noted that appellant injured his right hip while at work on September 13, 2012. He advised that appellant was performing his work activities and was pushing a cart with injury to his hip. Dr. Katsigiorgis indicated that appellant related that “prior to that” his hip was “feeling fine.” He diagnosed “right hip sprain, rule out tear.” Dr. Katsigiorgis recommended a magnetic resonance imaging (MRI) scan of the right hip. An October 2, 2012 MRI scan of the hips read by Dr. Robert Diamond, a Board-certified diagnostic radiologist, revealed a two-millimeter inferolateral subcortical acetabular cyst and L5-S1 disc hydration loss with spondylosis. On October 25, 2012 Dr. Katsigiorgis noted that appellant was having pain and difficulty about the right hip. Appellant related that it was bothering him considerably. Dr. Katsigiorgis examined appellant and determined that he had right hip derangement with failed conservative care. He requested a right total hip replacement.

On November 7, 2012 OWCP accepted the claim for sprain of the right hip and thigh. Appellant received appropriate compensation for total disability. OWCP explained that it was unable to accept hip derangement as his treating physician did not provide a medical narrative explaining how this was caused or aggravated by the work incident.

On December 7, 2012 OWCP received a November 15, 2012 report from Dr. Katsigiorgis, who advised that he examined the right hip and determined that appellant had restricted range of motion in all planes with tenderness, negative heel strike, and negative log roll. Dr. Katsigiorgis diagnosed right hip derangement and requested authorization for a right hip replacement. He opined that “the right hip derangement is causally related secondary to the work[-]related injury.” In a December 13, 2012 report, Dr. Katsigiorgis reiterated his opinion that the right hip derangement and need for surgery were due to work injury, as the work injury made the right hip condition symptomatic.

By decision dated January 4, 2013, OWCP denied appellant’s claim for the condition of right hip derangement finding that the medical evidence was insufficient.

In a January 24, 2013 report, Dr. Katsigiorgis advised that appellant was totally disabled. On February 1, 2013 he diagnosed right hip chondromalacia, status post work-related injury and opined that he believed that the “chondromalacia of the hip” was “exacerbated secondary to the injury at work. Dr. Katsigiorgis was asymptomatic before and this caused symptomatic chondromalacia.” He recommended physical therapy and indicated that appellant was disabled from work activities. Dr. Katsigiorgis repeated his request for authorization for right total hip replacement.

In a January 28, 2013 report, Dr. Peter G. Sultan, a Board-certified orthopedic surgeon, related the history of the work injury and noted appellant’s treatment. He examined appellant and provided findings. Dr. Sultan determined that appellant had soft tissue inflammation around the hips. He recommended physical therapy.

On February 20, 2013 OWCP referred appellant to Dr. David Benatar, a Board-certified orthopedic surgeon, for a second opinion regarding appellant’s diagnosed conditions and their relationship to his employment. In a report dated March 12, 2013, Dr. Benatar described

appellant's history of injury and treatment and examined him. He diagnosed a right hip sprain/strain. Dr. Benatar indicated that impingement and labral pathology should be ruled out. He explained that there was no evidence to support how appellant had significant arthritic changes that required aggressive intervention. Dr. Benatar explained that the MRI scan did not show evidence of a labral tear and impingement was not mentioned. He opined that he did not believe that there was an aggravation as there were no significant degenerative changes on the diagnostic testing. Dr. Benatar advised that appellant had some continued disability, which was partial and not total, which arose from the employment injury. He prescribed restrictions for light duty and indicated that appellant had not reached maximum medical improvement.

On May 13, 2013 Dr. Katsigiorgis performed a right total hip replacement. OWCP did not authorize the procedure.

On November 1, 2013 OWCP referred appellant, along with a statement of accepted facts, and the medical record to Dr. David Zitner, a Board-certified orthopedic surgeon, for an impartial medical evaluation to resolve the conflict in opinion between Dr. Katsigiorgis and Dr. Benatar, the second opinion physician regarding appellant's diagnosis, whether a causal relationship exists between his condition and the accepted work injury, and whether he had continuing disability due to the accepted work injury.

In a November 20, 2013 report, Dr. Zitner noted appellant's history of injury and treatment. He examined appellant and provided findings, which included a dull constant aching pain throughout his hip and groin. Dr. Zitner advised that appellant indicated that he had pain at night and difficulty sleeping. Appellant also related that his pain increased with sitting, standing, walking, extreme range of motion, and with therapy. Regarding the right hip, Dr. Zitner found mild-to-moderate reported tenderness about the greater trochanter and posterior hip joint and significant tenderness in the groin. He found a well-healed total hip incision with 70 to 80 percent normal range of motion measured visually limited by pain and some stiffness. Dr. Zitner advised that there was no neurologic defect in the lower extremities. He diagnosed right hip strain and a possible hernia. Dr. Zitner explained that the injury described was a minor hip strain and did not explain the severe persistent symptoms. He opined that he saw "no causal relationship between the reported injury and the current treatment [appellant] is receiving and is certainly not causally related to any right hip derangement requiring surgery. Dr. Zitner explained that appellant had a relatively minor right hip strain as the only orthopedic issue involved. He advised that appellant had two hernia surgeries and "[appellant] himself thought he could have aggravated his hernia and I think much of his issues are soft tissue related to the groin and not necessarily orthopedic in nature." Dr. Zitner advised that appellant's current symptoms suggested that a hernia could be the case. He explained that appellant's description and mechanism of injury did not explain any of his current symptoms. Dr. Zitner noted that the hip MRI scan showed no significant orthopedic pathology that could be explained by the mechanism of injury and showed no arthritis that indicated a right hip replacement. He advised that the right hip replacement was not indicated and in fact gave him no significant relief after over five months and opined that he did not believe that it was necessary or helpful. Dr. Zitner further noted that appellant's current complaints, symptoms, and examination seemed "significantly out of proportion to his reported injury and he had no response to orthopedic treatment." He opined that he saw no causal relationship from an orthopedic standpoint and no aggravation of any preexisting condition. Dr. Zitner noted that appellant should be evaluated for a hernia and was

capable of sedentary desk work. He noted that appellant was not capable of prolonged standing, walking, carrying, or lifting.

By letter dated December 30, 2013, appellant's representative requested reconsideration from OWCP's decision dated January 4, 2013. He argued that appellant established that his preexisting condition was aggravated and included new medical evidence. In a December 23, 2013 report, Dr. Katsigiorgis opined: "I do feel that if the history provided is accurate and [appellant] has not had any prior injuries to his hip, I do feel that the chronic repetitive activities which he states he was doing throughout these 19 years of work, are causally related to his right hip derangement." Appellant continued to submit treatment notes.

OWCP asked its medical adviser to review Dr. Katsigiorgis' report. In a May 6, 2014, the medical adviser concluded that appellant only sustained a strain of the right hip and the other conditions of right hip chondromalacia and degenerative changes were preexisting. He opined that the MRI scan findings supported that appellant's conditions were "preexisting and possibly degenerative but not traumatic."

In a May 14, 2014 memorandum, OWCP noted that the case was sent to the medical adviser to inquire about expanding his accepted condition to include a right hip derangement. It noted that a formal decision was issued on January 4, 2013; however, it was indexed incorrectly and additional development was undertaken.

By decision dated June 19, 2014, OWCP denied modification of the January 4, 2013 decision. It noted the medical development and Dr. Zitner's referee opinion that appellant had only a mild hip strain and no condition that required surgery.

LEGAL PRECEDENT

Regarding consequential injuries, 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 a compensable primary injury.²

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.³ To establish a causal relationship between the condition claimed, as well as any attendant disability, and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.⁴ Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁵ Rationalized medical evidence is evidence which includes a physician's rationalized medical 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

² *S.M.*, 58 ECAB 166 (2006), citing A. Larson, *The Law of Workers' Compensation* § 10.01 (2004).

³ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁴ *Jennifer Atkerson*, 55 ECAB 317 (2004).

⁵ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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

FECA provides that, if there is a disagreement between a physician making an examination for the United States and the physician of the employee, the Secretary must appoint a third physician to make an examination.⁷ Likewise, the implementing regulations state 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 or consultant, OWCP must appoint a third physician to make an examination. This is called a referee examination, and OWCP is required to select a physician who is qualified in the appropriate specialty, and who has had no prior connection with the case.⁸ It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background, must be given special weight.⁹

ANALYSIS

OWCP accepted the claim for sprain of the right hip and thigh. It denied appellant's claim for chondromalacia of the right hip and did not authorize the May 13, 2013 right total hip replacement. The Board finds that he has not met his burden of proof to show that any additional right hip condition or surgery is causally related to the accepted condition.

OWCP properly determined that a conflict existed in the medical opinion evidence as to whether appellant had any additional conditions and disability causally related to the September 13, 2012 injury. Appellant's treating physician, Dr. Katsigiorgis, opined that appellant's right hip derangement was secondary to his work-related injury and requested authorization for right hip replacement. He also indicated that appellant was totally disabled from work. OWCP's second opinion physician, Dr. Benatar, opined that appellant did not have any additional condition causally related to the accepted injury.¹⁰

To resolve the conflict in medical opinion, OWCP referred appellant to Dr. Zitner for an impartial medical examination and an opinion as to whether appellant had any additional conditions causally related to the September 13, 2012 injury.

In a November 20, 2013 report, Dr. Zitner noted appellant's history and treatment. He related that appellant indicated that his right hip area remained symptomatic. Dr. Zitner noted appellant's surgery and findings, including mild-to-moderate reported tenderness about the greater trochanter and posterior right hip joint, and significant tenderness in the groin. He

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ 5 U.S.C. §§ 8101-8193, 8123(a).

⁸ 20 C.F.R. § 10.321.

⁹ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

¹⁰ While he advised that appellant had some disability, Dr. Benatar prescribed restrictions for light duty.

explained that the work injury was a minor hip strain and there was no explanation to support the severe persistent symptoms. Dr. Zitner opined that he saw “no causal relationship between the reported injury and the current treatment he is receiving and is certainly not causally related to any right hip derangement requiring surgery.” He explained that appellant had a relatively minor right hip strain as the only orthopedic issue involved. Dr. Zitner noted that appellant related that he had two hernia surgeries and “[appellant] himself thought he could have aggravated his hernia and I think much of his issues are soft tissue related to the groin and not necessarily orthopedic in nature.” He advised that appellant’s current symptoms suggested that a hernia could be the case. Dr. Zitner advised that appellant’s description and mechanism of injury did not explain any of his current symptoms. He referenced the MRI scan of the right hip and advised that there was no significant orthopedic pathology that could be explained by the mechanism of injury and furthermore, there was no arthritis that indicated a right hip replacement. Dr. Zitner also explained that the right hip replacement gave appellant no significant relief after more than five months and opined that he did not believe it was necessary or helpful. He further noted that appellant’s current complaints, symptoms, and examination seemed “significantly out of proportion to his reported injury and he had no response to orthopedic treatment.” Dr. Zitner diagnosed right hip strain and possible hernia. He explained that there was no causal relationship from the orthopedic standpoint and no aggravation of any preexisting condition. Dr. Zitner noted that appellant was disabled, but needed to be evaluated for a hernia. However, appellant was capable of sedentary desk work and noted restrictions.

The Board finds that OWCP properly relied on Dr. Zitner’s November 20, 2013 report in determining that appellant did not have any additional conditions or disability causally related to the accepted employment injury. Dr. Zitner’s opinion is sufficiently well rationalized and based upon a proper factual background. He examined appellant thoroughly, reviewed the medical records, and reported accurate medical and employment histories. Thus, Dr. Zitner’s opinion is entitled to special weight.¹¹

Following Dr. Zitner’s report, OWCP received additional reports from Dr. Katsigiorgis, to include his December 23, 2013 report. However, Dr. Katsigiorgis merely reiterated previously stated findings and conclusions regarding appellant’s condition. As he had been on one side of the conflict in the medical opinion that the impartial specialist resolved, the treating physician’s reports were insufficient to overcome the special weight accorded the impartial specialist or to create a new medical conflict.¹² There are no other current medical reports establishing that appellant’s additional right hip conditions, or need for surgery, are causally related to his September 13, 2013 work injury.¹³

¹¹ See *Bryan O. Crane*, 56 ECAB 713 (2005).

¹² *Alice J. Tysinger*, 51 ECAB 638 (2000); *Barbara J. Warren*, 51 ECAB 413 (2000).

¹³ The record also includes a May 6, 2014 report from OWCP’s medical adviser. The Board notes that OWCP procedures provide that cases returned from a referee medical examiner should not routinely be sent to an OWCP medical adviser for review unless a schedule award is at issue. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.11(f) (September 2010). However, the record indicates that OWCP referred the matter to the medical adviser to review the December 23, 2013 report of Dr. Katsigiorgis and not to critique the impartial specialist’s report. See *Richard R. LeMay*, 56 ECAB 341 (2005) (the resolution of the conflict is the responsibility of the impartial medical specialist). Any error is harmless as OWCP’s June 19, 2014 decision did not purport to rely on the medical adviser’s report in reaching its decision.

The Board finds that appellant has not met his burden of proof to establish that he had any additional conditions or disability causally related to his accepted work injury. Therefore, OWCP properly denied his request to expand his claim.

Appellant may submit evidence or argument with a written request for reconsideration 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 that his chondromalacia of the right hip was causally related to his accepted injuries.

ORDER

IT IS HEREBY ORDERED THAT the June 19, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 2015
Washington, DC

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

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

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