

FACTUAL HISTORY

On October 22, 2003 appellant, then a 47-year-old forestry technician, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his right foot when a several hundred pound gate fell on his right foot. He stated that the gate hinge was broken, but there was no warning sign. OWCP accepted appellant's claim for fracture of one or more phalanges of the foot.

Appellant filed a claim for a recurrence of disability (Form CA-7). He claimed that the recurrence occurred on April 7, 2008 because on July 6, 2010 he had developed arthritis, that his right toe continued to hurt, and that his right toe limited his ability to walk at a normal pace. On July 14, 2010 OWCP accepted appellant's claim for resolved fracture of the right great toe and traumatic arthritis of the right great toe.

On January 31, 2012 appellant requested orthotics for his right foot. He noted difficulty receiving this medical treatment on March 13, 2012. On March 30, 2012 appellant requested treatment from the University of Pennsylvania. By decision dated April 6, 2012, OWCP denied this option and requested that he seek treatment in his local area of Tennessee.

In a letter dated May 1, 2012, appellant alleged that he had bursitis in his hip and lower back pain as the result of improper foot placement due to his right great toe injury. He sought approval for right toe surgery. OWCP authorized right great toe surgery on August 16, 2012.

Dr. Paul Wakefield, a Board-certified family practitioner, examined appellant on May 28, 2012 due to bursitis of the right hip, osteoarthritis, as well as, allergic rhinitis, hyperlipidemia, irritable bowel syndrome, primary insomnia, and thoracic facet syndrome. He diagnosed bursitis of the right hip and osteoarthritis.

In a statement dated August 23, 2012, appellant alleged that he was unable to perform his regular job duties due to his accepted condition. He further alleged that his right toe condition affected his hip bursitis.

OWCP updated appellant's accepted condition in a letter dated October 5, 2012 to include hallux rigidus on the right. On October 24, 2012 appellant underwent a first metatarsophalangeal joint implant arthroplasty of the right foot.

Following his October 24, 2012 surgery, appellant submitted several notes from Justin R. Shepherd, a physical therapist, opining that delay in surgery for appellant's right toe resulted in his development of bursitis in the right hip and in left foot pain.

Appellant returned to limited-duty work on December 24, 2012. He returned to full-time work on April 18, 2013. Appellant requested a schedule award on April 29, 2013. By decision dated July 17, 2013, OWCP granted him a schedule award for eight percent impairment of the right leg.

On February 18, 2014 appellant alleged that his right hip bursitis was painful. He indicated that he would like to claim this condition as related to his employment. Appellant submitted notes from Mr. Shepherd, the physical therapist, dated October 24, 2012 through

February 14, 2013. Dr. Wakefield completed a note on April 7, 2014 and opined that appellant's recurring bursitis in his right hip was a direct result of the change in his gait to accommodate his foot injury.

OWCP requested additional factual and medical evidence in support of appellant's claim for a consequential condition of right hip bursitis on May 8, 2014. It allowed him 30 days for a response.

Appellant responded on June 8, 2014. He described his employment injury when a several hundred pound gate fell directly on his right big toe joint and broke his toe in two places. Appellant reported that he developed traumatic arthropathy and required prescription orthotics to walk. As his orthotics wore out in November 2011, he became unable to walk appropriately. Appellant's gait was off and he was unable to go up slopes or hills without pain. He noted that he went without orthotics for six months. Appellant stated, "During this six month period, I was limited to working on level land and not driving government vehicles. During this period of time, my gait was extremely off, my left leg had to take the burden of my weight, and my right hip was becoming painful." Appellant received a diagnosis of right hip bursitis in August 2012. He utilized stretches to reduce his pain, but continued to experience difficulty sleeping, driving, and walking quickly. Appellant reported that when he attempted to go fast this caused hip pain.

Rob Hawkins, a nurse practitioner, completed a report on August 16, 2012 and diagnosed abductor and hip flexor tendinitis of the right hip.

By decision dated August 1, 2014, OWCP denied appellant's claim for a consequential right hip condition as he had failed to submit the necessary medical opinion evidence to establish a causal relationship between his diagnosed condition and his accepted employment injury.³

LEGAL PRECEDENT

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to claimant's own intentional conduct.⁴ Thus, a subsequent injury, be it 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.⁵

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical

³ Following OWCP's August 1, 2014 decision, appellant submitted additional new evidence. As OWCP did not consider this evidence in reaching a final decision, the Board may not address it for the first time on appeal. 20 C.F.R. § 501.2(c).

⁴ *Mary Poller*, 55 ECAB 483, 487 (2004); *P.H.*, Docket No. 15-0482 (issued August 4, 2015); 1 Arthur Larson and Lex K. Larson, *The Law of Workers' Compensation*, 10-1 (2006).

⁵ *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

evidence.⁶ Rationalized medical evidence is medical evidence which includes a physician's detailed 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 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.⁷ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is insufficient to establish causal relationship.⁸

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physician[s] as defined under FECA.⁹ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a consequential right hip condition as a result of his accepted right toe fracture.

Appellant has alleged that he developed right hip bursitis as a result of a change in his gait due to his accepted right toe fracture, traumatic arthritis of the right great toe, and hallux rigidus. He asserted that due to his right toe condition he was unable to walk up and down slopes and hills or to travel at the same speed. Appellant stated that walking at his normal rate of speed caused his right hip pain. As noted above, his belief that his condition was caused or aggravated by his employment injury is insufficient to establish causal relationship.¹¹

Appellant submitted limited medical evidence in support of his claim for a consequential injury. Dr. Wakefield completed a note on April 7, 2014 and opined that appellant's recurring bursitis in his right hip was a direct result of the change in his gait to accommodate his foot injury. This is the only medical report supporting appellant's claim for a consequential injury. The Board finds that Dr. Wakefield's report is not sufficient to meet appellant's burden of proof to establish that his right hip bursitis is causally related to his accepted right toe conditions, as Dr. Wakefield did not provide any detailed medical reasoning in support of his opinion. While Dr. Wakefield opined that appellant's foot injury resulted in a change in gait, he did not explain how this change in gait would have resulted in right hip bursitis. Without further medical rationale explaining why and how appellant's right toe conditions resulted in right hip bursitis,

⁶ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹⁰ *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

¹¹ *Mascarenas*, *supra* note 8.

this report is not sufficiently detailed and well reasoned to meet his burden of proof and establish his consequential injury claim.

Appellant also submitted notes from Mr. Shepherd, the physical therapist, and Mr. Hawkins, a nurse practitioner, in support of his consequential injury claim. Neither physical therapists nor nurse practitioners are considered physicians for the purposes of FECA.¹² Reports from these practitioners thus do not constitute medical evidence, and their findings and opinions do not suffice for purposes of establishing entitlement to FECA benefits.¹³

Appellant may submit new evidence or argument as part of a formal 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 has not submitted sufficient medical opinion evidence to establish that he developed right hip bursitis as a consequence of his accepted right toe conditions.

¹² *M.G.*, Docket No. 15-1201 (issued September 15, 2015).

¹³ *K.W.*, *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the August 1, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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