

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

A.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Peabody, MA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 15-1687
Issued: June 9, 2016**

Appearances:
Daniel Shapiro, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 3, 2015 appellant, through counsel, filed a timely appeal from a February 4, 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.²

ISSUE

The issue is whether appellant met his burden of proof to establish an occupational disease in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant requested oral argument. By order dated December 8, 2015, the Board, in its discretion, denied oral argument as it determined that the issues on appeal could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 15-1687 (issued December 8, 2015).

FACTUAL HISTORY

On January 23, 2013 appellant, then a 64-year-old former letter carrier, filed an occupational disease claim (Form CA-2) alleging that factors of his employment caused a permanent acceleration of osteoarthritis of the bilateral knees and hips. He alleged that standing, bending, twisting, pivoting, stooping, walking, climbing stairs, lifting, and carrying contributed to his condition. Appellant contended that he first became aware of his condition and its relation to his federal employment on October 24, 2012. He retired on April 30, 2010.

Multiple reports from Dr. William Murzic, a Board-certified orthopedic surgeon, and Dr. Maurice Greenbaum, Board-certified in internal medicine, were submitted assessing osteoarthritis of various areas of appellant's body. On June 26, 2006 appellant underwent a right total hip arthroplasty. His preoperative diagnosis was osteoarthritis of the right hip.

In September 22, 2011 diagnostic reports, Dr. Michael Geary, a Board-certified diagnostic radiologist, advised that x-rays revealed mild left hip osteoarthritis, right knee tri-compartmental degenerative spurring of the right knee, and prominent joint space narrowing in the medial compartment of the left knee.

In a January 4, 2013 report, Dr. Byron Hartunian, an orthopedic surgeon, advised that appellant's job duties included walking five to eight miles a day, carrying a satchel weighing up to 35 pounds, lifting and carrying up to 70 pounds, prolonged standing, repetitive bending, twisting, pivoting, stooping, squatting, climbing, and reaching. He noted that in 2000 appellant noticed right hip pain radiating towards the right knee and that currently he had significant arthritic changes of the left knee and increased stiffness of the left hip. Right hip examination revealed 25 percent limitation of squatting because of stiffness, 89 degrees of flexion, 6 degrees extension, 14 degrees internal rotation, 36 degrees external rotation, 34 degrees abduction, and 18 degrees adduction. The left hip had 90 degrees flexion, 6 degrees extension, 12 degrees internal rotation, 34 degrees external rotation, 24 degrees abduction, and 16 degrees adduction. Examination of the knees revealed tenderness to palpation along the medial joint, 98 degrees right knee flexion, and 84 degrees left knee flexion. Dr. Hartunian noted the results of October 24, 2012 x-rays and assessed post right total hip replacement for end-stage degenerative arthritis, primary right knee joint arthritis, left hip arthritis, and left knee arthritis. He opined that, although the etiology of arthritis cannot be stated with certainty, repetitive forceful stress through the hips and knees is a known and recognized causative factor and such was likely the case with appellant. Dr. Hartunian noted that scientific evidence established that factors contributing to the progression of osteoarthritis in joints include heavy work, standing, walking, stooping, bending, kneeling, lifting, twisting, and pivoting, which was the type of work appellant performed. He asserted that, no matter the original cause of the arthritis, appellant's activities permanently accelerated the preexistent degenerative process in his hips and knees. Dr. Hartunian noted that OWCP had accepted numerous claims where letter carrier duties affected lower extremity joints already afflicted with arthritis. He quoted a report from an OWCP medical adviser, in another claim where OWCP accepted that mail carrier duties aggravated osteoarthritis.

By letter dated January 31, 2013, the employing establishment controverted appellant's claim arguing that medical evidence showed that he was well aware of his condition prior to

October 2012. It contended that a more acceptable date of injury would be May 28, 2002, as a radiology report on that day showed bilateral degenerative arthritis of the hips.

By letter dated March 1, 2013, OWCP informed appellant of the type of evidence needed to establish his claim. It advised him that he had 30 days from the date of the letter to submit responsive evidence.

By decision dated May 2, 2013, OWCP denied the claim finding the medical evidence of record was insufficient to establish that the diagnosed conditions were causally related to the work duties. It noted that Dr. Hartunian's opinion was based in part on diagnostic tests that were not made available to OWCP.

On May 7, 2013 appellant, through counsel, requested an oral hearing. Later on July 27, 2013, counsel requested a review of the written record as opposed to an oral hearing.

In a July 25, 2013 report, Dr. Hartunian clarified that he mistakenly referenced an October 24, 2012 diagnostic report and that he actually reviewed September 22, 2011 x-rays. He reiterated his opinion that appellant's job duties permanently hastened and accelerated the preexisting degenerative process in his hips and knees and that his work duties were a significant causative factor in that regard.

By decision dated December 9, 2013, an OWCP hearing representative affirmed the denial of appellant's claim.

By letter dated December 5, 2014, appellant requested reconsideration. In support of his request, counsel submitted reports, from other claims not involving appellant, where OWCP medical advisers found that the duties of letter carriers aggravated and accelerated osteoarthritis. He asserted that this was precedent under OWCP procedures.

In a February 4, 2015 decision, OWCP advised that before newly submitted evidence was insufficient to warrant modification of its prior decision.

On appeal, appellant's counsel disagreed with the hearing representative. He contended that she misconstrued causal relationship, inaccurately characterized evidence and testimony, and inaccurately quoted and applied applicable law.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to

the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

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 generally required to establish causal relationship. 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.⁶ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS

The Board finds that this case is not in posture for a decision.

Appellant filed an occupational disease claim asserting that he sustained an acceleration of bilateral hip and knee osteoarthritis due to factors of his employment. OWCP denied the claim because he submitted insufficient medical evidence to establish that factors of his federal employment caused an aggravation of bilateral knee and hip osteoarthritis. The Board finds, however, that the case requires further development regarding whether appellant sustained an occupational disease causally related to employment factors.

In his January 4, 2013 report, Dr. Hartunian noted appellant's work duties and reviewed his duties and requirement as a letter carrier. He noted the weight of the mailbag and the amount of miles he walked daily. Dr. Hartunian indicated that the climbing of stair loads the lower body joints three times the body weight, and descending stairs loads six times the body weight. Further, he articulated that repetitive forceful stresses through the hip and knees are a known and causative factor of degenerative arthritis. Dr. Hartunian also outlined appellant's detailed treatment history. He opined that, although the etiology of arthritis cannot be determined with

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁶ *I.J.*, 59 ECAB 408 (2008); *supra* note 4.

⁷ *James Mack*, 43 ECAB 321 (1991).

certainty, repetitive forceful stress through the hips and knees is a known and recognized causative factor and such was likely the case with appellant. Dr. Hartunian noted that scientific evidence established that factors contributing to the progression of osteoarthritis in joints include heavy work, standing, walking, stooping, bending, kneeling, lifting, twisting, and pivoting, which was the type of work appellant performed. He asserted that, no matter the original cause of the arthritis, appellant's activities permanently accelerated the preexistent degenerative process in his hips and knees. Dr. Hartunian reiterated his opinion on causal relationship in his July 25, 2013 report. He opined that appellant's activities as a letter carrier permanently hastened and accelerated the preexisting degenerative process in his hips and knees.

Dr. Hartunian's reports, when read together, identified employment factors which appellant claimed caused his condition, identified findings upon examination, and explained how the identified employment factors caused or aggravated a diagnosed condition. The Board finds that Dr. Hartunian's opinion, while not sufficiently rationalized to meet appellant's burden of proof, is sufficient, given the absence of any opposing medical evidence, to require further development of the record.⁸ It is well established that proceedings under FECA are not adversarial in nature⁹ and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁰ OWCP has an obligation to see that justice is done.¹¹

The case will be remanded to OWCP for further action consistent with this decision. On remand, after such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.¹²

CONCLUSION

The Board finds that the case is not in posture for a decision.

⁸ See *Earnest J. Reece, Jr.*, 32 ECAB 1508, 1510 (1981). See also *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁹ See e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71 (1956).

¹⁰ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

¹¹ *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹² See *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for additional development consistent with this decision.

Issued: June 9, 2016
Washington, DC

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

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

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