

FACTUAL HISTORY

On March 8, 2012 appellant, then a 41-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on March 5, 2012 he injured his right hip due to jumping off a truck. OWCP accepted the claim for right hip and thigh sprains on August 23, 2012. Appellant stopped work on March 5, 2012 and returned to full-duty work with no restrictions on March 29, 2012.

On February 5, 2013 appellant filed a claim for a recurrence of disability (Form CA-2a) beginning January 20, 2013 due to his accepted March 5, 2012 employment injury. He alleged that he continued to have right hip and lower back pain and that he stopped work on January 28, 2013.

In a letter dated February 22, 2013, OWCP informed appellant that the evidence of record was insufficient to establish his recurrence claim. Appellant was advised as to the definition of a recurrence and the type of medical and factual evidence required to support his claim. He was afforded 30 days to provide the requested information.

In a March 14, 2013 report, Dr. Anel M. Abreu, a treating osteopath specializing in orthopedic surgery, diagnosed asymptomatic right hip stage 3 avascular necrosis (AVN) of the femoral head, asymptomatic early stage left hip AVN of the femoral head, and right gluteal strain/piriformis strain. He noted the history of appellant's right hip pain which began on March 5, 2012 when he jumped off a plow at work. Dr. Abreu related that appellant was initially diagnosed with a gluteal strain by Dr. Bruce Baird, a treating Board-certified orthopedic surgeon, and was released to work on March 27, 2012. He noted that on September 10, 2012 appellant was seen for right leg pain. Notes from that evaluation noted that appellant seemed to be improving and attempted to return to work, but his full work activities caused worsening hip pain, primarily on the right. Based on review of an x-ray interpretation and magnetic resonance imaging (MRI) scan he was diagnosed with bilateral AVN with stage 3 right effusion and asymptomatic on the left. Prior to the March 5, 2012 employment injury appellant stated that he had no hip problems. A physical examination revealed a slight antalgic right gait, intact sensation and motor, and discomfort in the right buttock. Dr. Abreu reviewed a November 8, 2012 x-ray interpretation, which revealed some femoral head flattening which was compatible with AVN. A right hip MRI scan taken on November 5, 2012 revealed bilateral AVN of the femoral heads, which was worse on the right.

In an April 25, 2013 progress report, Dr. Edward W. Choung, a treating Board-certified orthopedic surgeon and sports medicine physician, and Michael K. McElheran, a physician assistant, noted that appellant was seen for a follow-up visit for right hip and buttock pain. Diagnoses included right hip pain with underlying AVN due to a March 5, 2012 employment injury. Mr. McElheran and Dr. Choung opined that the bilateral hip AVN was due to a March 2012 employment injury when appellant jumped off a plow as this was when the right hip and buttock pain began. Due to appellant's persistent symptoms he was taken off work. A physical examination revealed a slight limp while walking, a somewhat irritable FABER's test with increased pain into the buttock and groin regions, negative straight leg testing, and trace deep tendon reflexes at the ankles and knees.

By decision dated May 20, 2013, OWCP denied appellant's February 5, 2013 recurrence of disability claim.³

In a letter dated May 28, 2013, appellant requested a telephonic hearing before an OWCP hearing representative. The hearing was held on September 10, 2013.

A June 3, 2013 MRI scan revealed L3-4 and L4-5 diffuse disc bulges with minimal thecal sac compression.

A June 21, 2013 progress report by Dr. Bruce L. Baird, a treating Board-certified orthopedic surgeon, diagnosed right hip pain due to an employment injury with continued symptoms. He noted that appellant was seen for continuing right hip and buttock pain. Appellant related that any walking activities and using the stairs are a problem and that he is unable to bear any weight on the right side. A review of a lumbar MRI scan revealed degenerative changes at L3-4 and L4-5. A physical examination revealed a significant limping gait, which favored the right side, right hip irritability on range of motion, tenderness on lateral hip border, and negative bilateral straight leg raising. Dr. Baird opined that appellant was disabled from performing his usual job and that without treatment he would be unable to return to his usual employment.

Dr. Baird, in a June 21, 2013 attending physician's report, noted that appellant was last seen on June 21, 2013 and that he was totally disabled from working due to right hip pain. Diagnoses included AVN of the femoral head/neck, hip sprain, and degenerative lumbar disc. The report noted that appellant's first symptoms began on the date of injury and he was totally disabled from January 28 to March 14, 2013 and partially disabled from March 15 to September 21, 2013.

Appellant was evaluated by Dr. Baird on September 25, 2013 due to ongoing right hip and buttock pain. Dr. Baird noted in his medical report of this same date that the question regarding the AVN was how it is related to a work injury as appellant has been unable to work since January 2013 due to discomfort in the right lower extremity resulting in an inability to walk more than to and from his car and sometimes that activity requires him to take a break. He noted that prior to stepping off of the plow at work that appellant did not have symptoms and after he did step off of the plow he had symptoms. Dr. Baird noted that prior to the incident at work appellant was working without any pain control medications or pain prior to that and since then he has had ongoing pain. More importantly, he observed that over the last year there was no rapid progression of the AVN and imaging studies remained similar in appearance. Dr. Baird therefore opined that although appellant may have had AVN in the right hip as a preexisting condition, clearly stepping off of the plow has exacerbated this condition and, given this has not progressed radiographically, appellant may not have even become symptomatic for this condition unless he had stepped awkwardly off of the plow.

³ On November 21, 2013 OWCP received a new October 16, 2013 recurrence claim alleging a recurrence of disability beginning January 27, 2013. In a letter dated January 6, 2014, it informed appellant that this additional recurrence claim had been reviewed and it was determined that it was duplicative of his prior claim which had been denied. OWCP therefore denied this new recurrence claim and informed him of his appeal rights.

By decision dated November 27, 2013, an OWCP hearing representative affirmed the denial of appellant's recurrence claim. The Board notes that the medical report of September 25, 2013 is included in the analysis contained within this merit decision, but misidentifies the report as coming from Dr. Abreu instead of the correct physician, Dr. Baird.

OWCP subsequently received a November 13, 2013 report by Dr. Perry T. Shuman, a treating Board-certified orthopedic surgeon, and the P.A. Mr. McElheran, diagnosing right hip pain due to the employment injury with underlying right hip AVN. Appellant was seen for right hip difficulty and right buttock and hip pain. He continued to have persistent symptoms that increased with daily activities. The report related that appellant has tried to return to work many times, but due to difficulties with bending forward, walking, and getting dressed that he is unable to return to work.

On January 27, 2014 OWCP received a December 26, 2013 progress report from Dr. Shuman diagnosing right hip pain due to the employment injury with underlying right hip AVN. The report was similar to the findings and plan set forth in the prior report of November 13, 2013.

In a letter dated February 6, 2014, appellant requested reconsideration and submitted a January 14, 2014 report by Dr. Baird in support of his request. In a January 23, 2014 workers' compensation report on causal relationship, Dr. Baird noted that appellant was first seen on March 7, 2012 for groin pain.. He described the history of injury as occurring when appellant stepped off a snowplow. Diagnoses included bilateral hip AVN which he opined was first determined to be due to the employment injury on March 7, 2012. Dr. Baird checked "yes" to the question of whether appellant was disabled from work and noted the period of disability as January 28, 2013 to the present.

Dr. Baird, in a progress note dated January 23, 2014, diagnosed AVN with subtle evidence of some femoral head collapse, which he opined may have progressed subtly since September. He related that appellant has had right hip problems including AVN and that the right hip was injured on March 5, 2012 when he jumped off a snowplow. Dr. Baird noted his disagreement with OWCP's finding that appellant's right hip discomfort was not employment related. In support of this conclusion, he opined that people "can have asymptomatic [AVN] and an injury could precipitate the onset of symptoms." Thus, when appellant stepped off the snowplow on March 5, 2012 he developed right hip symptoms as the result of his landing with his full weight on his right hip. Dr. Baird opined that due to his right hip condition that appellant is disabled from his usual job and "is moderately to markedly impaired from his ability to perform work-type activities." He noted that appellant sustained no new injuries. In concluding, Dr. Baird opined that the significant trauma of stepping off a snowplow with a weight of 250 pounds onto the right extremity was a direct cause of the femoral head top collapse in the AVN setting.

By decision dated June 2, 2014, OWCP denied modification.

In a progress note dated April 7, 2014, Dr. Abreu noted that appellant was seen for right hip AVN and constant groin pain. Diagnoses include employment-related right hip AVN.

In a progress note dated May 19, 2014, Dr. Shuman diagnosed work-related right hip AVN and provided examination findings similar to prior reports.

In a progress note dated June 26, 2014, Dr. Abreu and Mr. McElheran diagnosed right hip pain as the result of an employment injury with underlying AVN. They noted that appellant was asymptomatic prior to the injury and that the right hip condition was the result of stepping off the plow and putting his full weight onto the right hip.

On August 11, 2014 OWCP received November 8, 2012 x-ray interpretations of both hips. A review of the right hip x-ray interpretation revealed minimal femoral head flattening and positive crescent sign with femoral head sclerotic changes. The left hip x-ray interpretation showed a positive crescent sign with no flattening.

In a letter dated September 9, 2014, appellant requested reconsideration of the June 2, 2014 decision.

On September 22, 2014 OWCP received a progress note dated August 12, 2014 from Dr. Baird diagnosing right hip pain as the result of an employment injury with underlying AVN. On October 2, 2014 Dr. Baird diagnosed persistent right hip pain with underlying AVN due to a work injury. He opined that his condition was “all related to an incident where he stepped off a plow.”

In a November 11, 2014 report, Dr. Baird again diagnosed AVN with right side femoral head collapse, which he opined seemed “to have been precipitated by a work-related injury.” He noted the injury occurred when appellant stepped off a plow onto his right heel and developed right discomfort, which has worsened since the injury. Dr. Baird reviewed an MRI scan, which showed some right femoral head flattening and AVN. The new study also showed femoral head deterioration progression. He also reviewed an x-ray interpretation of the right hip, which showed femoral head flattening and sclerosis, decreased joint space, and femoral head cystic changes consistent with AVN history. Physical examination findings remained the same. Based on physical examination findings and diagnostic testing, Dr. Baird recommended total right hip replacement.

In a progress note dated December 30, 2014, Dr. Baird related that appellant was seen for a right hip injury that was due to jumping off a plow and that the right hip had collapsed AVN. He diagnosed right hip femoral head collapse AVN following an employment injury.

On February 10, 2015 Dr. Baird provided an updated progress report on appellant’s right hip condition. Examination findings and history remained unchanged from prior reports. Dr. Baird reviewed x-ray interpretations which showed some right hip femoral head cystic change and flattening of the femoral head. Diagnoses included right hip AVN with femoral head collapse and possible right lower extremity radicular symptoms due to appellant’s favoring his right side. Dr. Baird opined that appellant was 75 percent impaired from performing his usual duties and recommended right hip replacement.

By decision dated March 12, 2015, OWCP denied modification.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which has resulted from a previous injury, or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴ If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken and an appropriate new claim should be filed.⁵

For conditions not accepted by OWCP as being employment related, it is the employee's burden of proof to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.⁶

ANALYSIS

OWCP accepted the claim for right hip and thigh strain due to a March 5, 2012 employment injury. Appellant stopped work on March 5, 2012 and returned to full-duty work on March 29, 2012. On February 5, 2013 he filed a recurrence of disability claim alleging that his work stoppage on January 28, 2013 was causally related to the accepted March 5, 2012 employment injury. Appellant alleged an inability to work due to a change in his medical condition related to the previously accepted work injury. OWCP denied the claim finding that the disability was due to a condition (right hip AVN) not accepted by OWCP.

The Board finds that the case is not in posture for a decision as to whether appellant sustained a recurrence of disability. The case must be remanded to OWCP for further development.

In support of his claim appellant submitted numerous reports from Drs. Abreu, Baird, Choung, and Shuman for the period March 14, 2013 through February 10, 2015, diagnosing right hip AVN due to an employment injury and diagnostic tests.

The record contains multiple reports from Dr. Baird diagnosing an employment-related right hip AVN condition and resultant disability. He provided a detailed history that appellant continued to have right hip pain following the accepted March 5, 2012 injury. In these reports, Dr. Baird explained that AVN can be asymptomatic and that an injury can precipitate the onset of symptoms. In his January 23, 2014 report, he opined that the significant trauma of stepping off a snowplow with a weight of 250 pounds onto the right extremity was a direct cause of the femoral head top collapse in the AVN setting to become symptomatic and disabling. Dr. Baird

⁴ 20 C.F.R. § 10.5(x). *See also A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997); *K.C.*, Docket No. 08-2222 (issued July 23, 2009); *Cecelia M. Corley*, 56 ECAB 662 (2005); *Donald T. Pippin*, 54 ECAB 631 (2003).

⁶ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

further noted that appellant has documented right hip AVN as confirmed by diagnostic testing, but did not have any pain or symptoms until after the accepted injury and has not sustained any new injury. In support of his causation opinion, he notes in his report of September 25, 2013 that since the date of the work injury there has been no rapid progression of the AVN and the imaging studies since that date have remained similar in appearance. It was Dr. Baird's opinion that given that the AVN had not progressed radiographically appellant would have not become symptomatic for this condition unless he had stepped awkwardly off the plow. Although these reports by Dr. Baird are not sufficiently rationalized to carry appellant's burden of proof in establishing his claim,⁷ the Board finds that they are of sufficient quality to require further development of his claim by OWCP.⁸

The remaining progress notes from Dr. Baird and progress reports from Drs. Abreu, Choung, and Shuman and all attribute appellant's right hip AVN condition to the March 5, 2012 employment injury and jumping off the snowplow, but offer no supporting rationale explaining the causal relationship between the diagnosed condition and the accepted employment injury other than noting that appellant was asymptomatic prior to the injury. The Board has held that an opinion supporting causal relationship because the employee was asymptomatic before the injury is insufficient, without sufficient rationale, to establish causal relationship.⁹ Thus, these reports are insufficient to support appellant's claim. In addition, the Board has held that medical evidence consisting solely of conclusory statements without supporting rationale is of little probative value.¹⁰ Thus, these reports are insufficient to support appellant's claim.

The record contains x-ray interpretations and MRI scans diagnosing lumbar and hip conditions. As they are diagnostic tests, causal relationship was not addressed and are insufficient to support appellant's claim that his right hip AVN and resultant disability was causally related to the accepted March 5, 2012 employment injury.¹¹

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.¹² While appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice

⁷ See *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁸ *John J. Carlone*, 41 ECAB 354 (1989); see also *Cheryl A. Monnell*, 40 ECAB 545 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁹ *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁰ See *T.M.*, *id.*; *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *William C. Thomas*, 45 ECAB 591 (1994) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹¹ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Jaja K. Asaramo supra* note 6 (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹² *R.B.*, Docket No. 08-1662 (issued December 18, 2008); *A.A.*, 59 ECAB 726 (2008); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Vanessa Young*, 55 ECAB 575 (2004).

is done.¹³ When OWCP undertakes to develop the medical aspects of a case, it must exercise extreme care in seeing that its administrative processes are impartially and fairly conducted.¹⁴

The case is remanded for OWCP to refer appellant to a second opinion physician for a detailed, reasoned medical opinion explaining whether his right hip AVN was caused or aggravated by the accepted March 12, 2012 employment injury. Following this and such other development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision regarding whether appellant established that his recurrence of disability was causally related to his accepted March 5, 2012 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 12, 2015 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: May 13, 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

¹³ *D.N.*, 59 ECAB 576 (2008); *Richard E. Simpson*, 55 ECAB 490 (2004).

¹⁴ *See P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Peter C. Belkind*, 56 ECAB 580 (2005).