

FACTUAL HISTORY

On October 24, 2013 appellant, then a 52-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that her work duties aggravated a left hip condition. She stated that she first became aware of the condition on August 19, 2011, but did not realize it had been caused or aggravated by her loading and unloading a postal vehicle six times per day until January 5, 2012.

In an October 21, 2013 report, John Buirice, a physician assistant, noted appellant's history of injury, provided examination findings, and reviewed x-ray reports. He related that she began having hip problems approximately five years ago. Mr. Buirice diagnosed severe hip degenerative arthritis and recommended possible hip replacement. In a note dated October 16 2013, he indicated that appellant could return to work on October 21, 2013.

Dr. Dana G. Seltzer, a Board-certified orthopedic surgeon, in a November 18, 2013 report, reviewed appellant's x-ray reports and diagnosed bilateral femoroacetabular impingement. He reported that her left hip had more advanced arthritis than her right hip. Dr. Seltzer noted that appellant had been employed as a letter carrier for approximately 25 years, provided a brief description of the employment duties, and concluded that she was disabled from performing those duties. He concluded that her hip problems had been caused by her employment due to the lack of any history of a prior hip injury.

In correspondence dated December 18, 2013, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her as to the medical and factual evidence needed to establish her claim and afforded her 30 days to provide this information.

On January 2, 2014 Dr. Seltzer diagnosed labral tear with femoroacetabular impingement, which combined to cause hip arthritis.

By decision dated January 22, 2014, OWCP denied appellant's claim as it found that she had failed to establish fact of injury. It found that the medical evidence submitted by appellant failed to contain any diagnosis of a left hip condition.

In an August 13, 2014 letter, Linda Warda, a registered nurse (RN), reported diagnoses of osteoarthritis and denial of a hip magnetic resonance imaging scan. She informed appellant that her hip problem appeared to be employment related.

In a September 9, 2014 report, Dr. Paul D. Burton, an osteopathic Board-certified orthopedic surgeon, diagnosed left hip osteoarthritis with an element of developmental dysplasia of the hip, lumbar spine degenerative disc disease and scoliosis, low back pain, and narcotic dependence with use of fentanyl patch. Under history of illness, he noted that appellant injured her back at work on July 23, 2014 as the result of twisting her body while moving a box. Dr. Burton noted that she related having a 2011 workers' compensation claim for her left hip and that her current work duties aggravated her hip pain. A physical examination of the left hip revealed no swelling, skin lesions, masses or abnormal skin discoloration, and mild degree of diffuse lumbar paraspinal tenderness, and lumbar spine scoliotic curvature. Dr. Burton

diagnosed complete loss of left hip joint space with hip developmental dysplasia, lumbar degenerative disc disease, and left hip and acetabulum subchondral cysts based on a June 12, 2014 x-ray interpretation. He concluded that appellant was totally disabled and her work activities had aggravated her hip pain.

On October 7, 2014 appellant requested reconsideration.

In a September 22, 2014 report, Dr. Christopher H. Fagan, a Board-certified emergency room physician, noted that appellant had been evaluated by Dr. Burton. He opined that her hip condition was due to her getting in and out of her car while on her mail route. Dr. Fagan explained appellant's "job has been somewhat contributory to her symptomatology, if not the chronic arthritis of her hip."

By decision dated January 5, 2015, OWCP found that the medical evidence of record was sufficient to establish a diagnosed medical condition, but remained insufficient to establish that it was causally related to the identified work factors.

In letters dated January 15, 2015 and February 5, 2016, counsel requested reconsideration. He argued that Dr. Burton's September 9, 2014 report and Dr. Fagan's September 22, 2014 report were sufficient to establish further development of the evidence.

By decision dated February 12, 2016, OWCP denied modification. It found the evidence insufficient to establish that appellant's left hip condition had been caused or aggravated by her employment and did not warrant further development of the medical evidence.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, 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

³ *Id.*

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁷ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her diagnosed hip conditions are causally related to her federal employment duties.

Appellant was treated by Dr. Seltzer who diagnosed labral tear with femoroacetabular impingement and hip arthritis. Dr. Seltzer noted that she had been employed for 25 years as a letter carrier and opined that her employment caused her hip problems as she had no history of a hip injury. In a report dated September 9, 2014, Dr. Burton provided examination findings and reviewed a July 12, 2014 x-ray interpretation. He diagnosed left hip osteoarthritis, hip developmental dysplasia, lumbar spine degenerative disc disease, low back pain, and narcotic dependence with use fentanyl patch. Dr. Burton opined that appellant was totally disabled and that her work activities aggravated her hip pain. Dr. Fagan, in a September 22, 2014 report, attributed her hip condition as being aggravated by her getting in and out of her car while on her mail route. Although Dr. Burton, Dr. Fagan, and Dr. Seltzer supported causal relationship, they did not provide sufficient medical rationale explaining the basis of their opinion regarding the causal relationship between appellant's diagnosed conditions and her work duties.¹⁰ None of the physicians explained how her duties as a letter carrier or getting in and out of a car would have physiologically caused or aggravated the diagnosed left hip conditions.¹¹ A medical report is of

⁶ *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

⁷ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

⁸ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *F.T.*, Docket No. 09-919 (issued December 7, 2009); *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹¹ *E.M.*, Docket No. 16-1335 (issued November 22, 2016).

limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹²

Appellant also submitted a report and disability notes from Mr. Buirice, a physician assistant, and an August 13, 2014 letter from RN Warda indicating that appellant's hip problem had been caused by her employment. However, the letter, report, and disability notes have no probative value as they do not qualify as medical evidence. Physician assistants and nurses are not considered physicians under FECA.¹³

On appeal counsel asserts that OWCP improperly denied the claim and that the medical evidence of record is sufficient evidence to warrant further development of the evidence on the issue of whether appellant's left hip condition had been caused or aggravated by loading and unloading a postal vehicle multiple times during the day. As found above, the medical evidence of record is insufficient to establish that her diagnosed conditions are causally related to her employment duties. Appellant has not submitted a physician's report, based on a complete medical and factual history, which explains how her work activities caused or aggravated a left hip condition.¹⁴ She has therefore not met her burden of proof.

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 failed to meet her burden of proof to establish that her left hip condition was causally related to factors of her federal employment

¹² *Id.*

¹³ 5 U.S.C. § 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See B.B.*, Docket No. 09-1858 (issued April 16, 2010) (nurses are not physicians under FECA; *see L.L.*, Docket No. 13-829 (issued August 20, 2013) (physician assistants are not physicians under FECA, therefore, their reports are of limited probative medical value; *Roy L. Humphrey*, *supra* note 6.

¹⁴ *Supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 12, 2016 is affirmed.

Issued: February 2, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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