

FACTUAL HISTORY

On December 31, 2015 appellant, then a 51-year-old city carrier, filed an occupational disease claim (Form CA-2), alleging that his bilateral hip pain had worsened over time.² Appellant stated that he worked over 28 years as a city carrier, during which time he engaged in squatting, bending, pushing, and lifting of parcels and postal equipment of varying weights six to eight hours a day, five days a week. He indicated that he first became aware of his claimed condition and its relation to his federal employment on June 1, 2015.³ Appellant did not stop work.

In a December 31, 2015 supplemental statement, appellant indicated that for the last six years he had been using a hip satchel to carry mail. He explained that he carried 10 to 35 pounds in the satchel on a daily basis while delivering mail on a walking route. Appellant described his route, which required walking six to eight miles a day, five days a week.

By development letter dated January 15, 2016, OWCP advised appellant of the deficiencies in his claim. It requested additional evidence, including a rationalized report from a physician explaining how his employment activities caused, contributed to, or aggravated any diagnosed medical condition. OWCP afforded appellant 30 days to submit the necessary evidence.

In an October 29, 2015 report, Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, referenced OWCP File No. xxxxxx451 on his report and reported a history of injury that occurred in 2011, when appellant pulled a tray from the rear of the vehicle forward and experienced pain in his right lower back with pain radiating into his right leg. He diagnosed multilevel degenerative disc disease, lumbar spine with sciatica and early degenerative arthritis, bilateral hips. Dr. Tauber opined that the bilateral hip conditions should be accepted. He noted that appellant had performed prolonged standing, walking, bending, twisting, stooping, and climbing as a mail carrier and stated that it would be inconceivable for appellant to carry out those duties without some industrial contribution to his hips.

Another copy of Dr. Tauber's October 29, 2015 report was provided. This report had the OWCP file number blanked out, with the current claim file number handwritten.

By decision dated February 16, 2016, OWCP denied appellant's claim as he had not established that he sustained an injury causally related to the accepted work factors. It noted that there was no discussion from Dr. Tauber which detailed the mechanism of injury.⁴

² The present claim was assigned OWCP File No. xxxxxx380.

³ Under OWCP File No. xxxxxx451, OWCP accepted that on March 29, 2011 appellant sustained a lumbar back sprain and displacement of lumbar intervertebral disc without myelopathy.

⁴ OWCP found that the medical documentation from Dr. Tauber detailed a mechanism of injury identical to appellant's claim in OWCP File No. xxxxxx451.

OWCP thereafter received February 8, 2016 magnetic resonance imaging (MRI) scan reports of the left and right hip, which indicated findings consistent with degeneration.⁵

On March 10, 2016 appellant requested reconsideration.

In a March 3, 2016 report, Dr. Tauber referenced OWCP File No. xxxxxx451, with a date of injury of March 29, 2011. He noted that appellant had significant pathology in both hips and significant degenerative disease in the lumbar spine with disc pathology. As confirmed on MRI scan, Dr. Tauber indicated that appellant has labral degeneration and early degenerative arthritis of the left hip and degenerative arthritis of the right hip. He opined that both hip conditions were work related. Dr. Tauber further indicated that appellant had done extensive walking, lifting, and bending as a postal worker for 28 years. He stated that it was inconceivable that a person could carry out appellant's employment activities and not have any contribution to the degeneration of his hips. Dr. Tauber noted that, while all activities of daily living would contribute to this as well, appellant carried out prolonged walking and climbing, lifting, bending, and stooping which, without question, contributed to his bilateral hip findings. A duplicate copy of Dr. Tauber's March 3, 2016 report was provided. This report had blocked out the file number and date-of-injury reference. A handwritten notation indicated the current file number with a June 1, 2015 date of injury.

By decision dated April 5, 2016, OWCP denied appellant's request for reconsideration of the merits of his claim, finding that the reconsideration request neither raised substantive legal questions nor included new and relevant evidence.

On April 25, 2016 appellant again requested reconsideration.

In an April 14, 2016 report, Dr. Tauber noted appellant's history of injury. He reported that in mid-2015 appellant began experiencing bilateral hip pain in the performance of his usual and customary work duties. Appellant attributed his symptoms to the repetitive nature of his job, which included prolonged walking and climbing down and up steps. Dr. Tauber indicated that appellant did not recall reporting this injury, but did file a claim. He noted that appellant was working modified duties.

In March 3 and April 14, 2016 reports, Dr. Tauber advised that appellant had degenerative arthritis of both hips with labral pathology in the left hip, which had been confirmed by the MRI scan. He opined that both hip conditions should be accepted as work related. Dr. Tauber indicated that appellant had been a postal worker for 28 years and had done extensive walking, lifting, and bending. He stated that it was inconceivable that an individual could carry out appellant's activities and not have any contribution to the degeneration of his hips. While he acknowledged that appellant's daily nonindustrial activities could have contributed to appellant's bilateral

⁵ The left hip had subtle degenerative changes of the left hip articulation, mild labral degeneration anteriorly without obvious displaced tear or paralabral cyst. Left hamstring origin tendinosis and discogenic degenerative disease of lumbar spine was also noted. The right hip had osteoarthrosis including chondral denudation/chondral fissuring of the superior acetabular margin with subtle osteophyte. A slight convexity of the femoral head superiorly may contribute to impingement.

degenerative hip condition, Dr. Tauber opined that appellant's prolonged walking, climbing, lifting, bending, and stooping activities, without question, contributed to the findings in his hips.

By decision dated July 21, 2016, OWCP denied modification of its February 16, 2016 merit decision. It found that the evidence submitted on reconsideration was of insufficient probative value to warrant modification.

On August 18, 2016 appellant requested reconsideration. Appellant indicated that MRI scan results were submitted.

In an August 4, 2016 report, Dr. Tauber diagnosed bilateral labral degeneration and degenerative arthritis of the hips. He repeated his prior description of appellant's employment activities.⁶ Dr. Tauber noted that MRI scans had indicated pathology in both hips. He opined that appellant's employment duties had a significant effect on his hips. Dr. Tauber contended, "It would be improper to state that his employment duties, which were strenuous, caused none or contributed zero to the pathology." He concluded that there was a causal relationship between the hip conditions and appellant's employment duties.

On August 26, 2016 appellant was referred to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion examination regarding the relationship between appellant's claimed bilateral hip conditions and factors of his employment. In an October 4, 2016 report, Dr. Hanley documented a history of the March 29, 2011 employment injury at which time appellant developed back pain and was diagnosed with lumbar disc protrusion. He noted that appellant returned to modified work delivering mail and that he did not do as much lifting and walking. Dr. Hanley also indicated that, while seeing Dr. Tauber for the purpose of an impairment evaluation, Dr. Tauber noted that appellant had symptoms that suggested the possibility of osteoarthritis of the hips. He diagnosed low-grade bilateral primary arthritis of the hip, which he noted was not significantly symptomatic at the present time. Dr. Hanley stated that the development of degenerative arthritis was multifactorial. He noted that Dr. Tauber had mentioned the possibility of a "cam lesion," which meant the congenital conformation of the hip was predisposed to impingement and, thus, labral injury. Dr. Hanley also noted that it would be difficult to attribute appellant's degenerative changes in the hips to anything other than a naturally occurring disease of life. He opined that the employment factors would constitute an aggravation on a temporary basis of the underlying condition, but it was not causative. Dr. Hanley indicated that, at some point in the future, appellant may experience industrial aggravation that may ultimately become permanent, but that currently was not the case as there were no objective abnormalities on examination. He explained that the objective findings on the MRI scans picked up findings long before symptoms occur. Dr. Hanley indicated that appellant's reporting pain could be consistent with trochanteric bursitis. He noted that appellant has significant degenerative disc disease in the lumbar spine which would cause some degree of pain laterally in the hips. A work capacity evaluation (Form OWCP-5c) was completed with permanent restrictions, which Dr. Hanley indicated was a prophylactic effort to prevent progression.

⁶ In addressing the handwritten notations on his earlier report, Dr. Tauber replied, "The facts are that, regardless of which claim number was typed or written in, this patient was a postal worker for 28 years carrying out extensive walking, lifting, and bending."

By decision dated November 16, 2016, OWCP denied modification of its July 21, 2016 decision. It noted that weight of the medical evidence rested with Dr. Hanley, the second opinion physician, who opined that appellant's bilateral hip condition was caused by the natural progression of the condition and not a result of appellant's federal employment activities.

On February 28, 2017 appellant requested reconsideration.

In a January 18, 2017 report, Dr. Tauber noted his disagreement with Dr. Hanley's opinion that appellant's bilateral hip condition was not casually related to his federal employment duties. He noted that, among the multifactorial causes of degenerative arthritis of the hips would include strenuous activities that would include walking, lifting, bending, and stooping. Dr. Tauber opined that it has been and remained his opinion that appellant's industrial duties were a contributing cause to the development of the degenerative arthritis and that those very same duties caused a "permanent" aggravation of his degenerative arthritis. He opined that, while the causation of appellant's degenerative arthritis was multifactorial, the strenuous activities appellant carried out were certainly and without question a contributing factor to the actual anatomic pathology. Dr. Tauber concluded, "in summary, it is my opinion that these conditions were caused and permanently aggravated by his industrial duties."

By decision dated June 22, 2017, OWCP denied modification of its November 16, 2016 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ 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 timely filed within the applicable time limitation period of FECA, and that an injury was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

To establish that an injury was sustained in the performance of duty in an occupational disease claim,⁹ an employee must submit the following: (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 claim; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.¹⁰

⁷ *Supra* note 1.

⁸ *See O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁹ OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

¹⁰ *See D.R.*, Docket No. 09-1723 (issued May 20, 2010).

To establish causal relationship between the employment and the claimed condition, the employee must submit rationalized medical opinion evidence supporting such causal relationship.¹¹ 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. 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.¹²

ANALYSIS

The Board finds that appellant has not established that his bilateral hip conditions were causally related to factors of his federal employment.

OWCP accepted that appellant engaged in strenuous activities of squatting, bending, pushing, pulling, and lifting parcels and postal equipment of varying weight during his employment duties as a city carrier. It denied his claim, however, finding that the evidence of record failed to establish a causal relationship between the accepted employment factors and his bilateral hip conditions.

OWCP ultimately determined that the weight of the medical evidence rested with Dr. Hanley, a Board-certified orthopedic surgeon serving as the second opinion physician. The Board finds that his well-rationalized report, which was based upon a proper factual and medical background, represents the weight of the medical evidence and establishes that appellant's bilateral degenerative hip condition was not caused or aggravated by the accepted employment duties.¹³

In his October 4, 2016 report, Dr. Hanley opined that appellant's low-grade bilateral primary arthritis of the hips was not the result of his employment duties, but rather was caused by the natural progression of a degenerative arthritic condition. He provided a detailed history of injury, findings on physical examination, and review and summary of appellant's medical reports and diagnostic studies. Dr. Hanley explained that the development of degenerative arthritis was multifactorial and that any aggravation of the underlying condition would be temporary. However, on examination he found no evidence that appellant was significantly symptomatic and there were no objective abnormalities on examination of an aggravation. Dr. Hanley also noted that there might be other reasons for appellant's subjective pain, including the congenital conformation of the hip, trochanteric bursitis, and pain from appellant's significant lumbar spine degenerative disc disease.

¹¹ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

¹² *James Mack*, 43 ECAB 321 (1991).

¹³ *Y.M.*, Docket No. 14-1050, 14-1193 (issued December 24, 2014).

The Board has reviewed the opinion of Dr. Hanley and finds that it has reliability, probative value, and a convincing quality with respect to its conclusions regarding the issue presented on appeal.¹⁴ Dr. Hanley's opinion is based on a proper factual and medical history and he thoroughly reviewed the factual and medical history by accurately summarizing the relevant medical evidence.¹⁵ As noted, he provided medical rationale of the multifactorial causes of degenerative arthritis of the hips and explained that appellant had no objective findings substantiating work-related aggravation of the underlying condition at this time. Thus, his opinion is entitled to the weight of the medical evidence and establishes that appellant's bilateral hip condition was not caused or aggravated by the accepted employment duties.¹⁶

In support of his claim, appellant submitted multiple medical reports from Dr. Tauber, who opined that appellant's labral degeneration and early degenerative arthritis of the left hip and degenerative arthritis of the right hip were a result of appellant's work-related occupational exposure.¹⁷ However, Dr. Tauber's reports lack the specificity and detail needed to establish that appellant's bilateral hip conditions are a result of a work-related occupational exposure.¹⁸ In his earlier reports, he concluded without providing a rationalized opinion that appellant's employment activities caused or contributed to his bilateral hip pathology. In his reports, Dr. Tauber noted that appellant had been a postal worker for 28 years and had done extensive walking and lifting and bending. He stated that it was inconceivable that an individual could carry out appellant's employment activities and not have any contribution to the bilateral degeneration of his hips. Dr. Tauber also acknowledged that appellant's daily nonindustrial activities could have contributed to appellant's bilateral degenerative hip condition. His opinion is of limited probative value as it was speculative and conclusory in nature.¹⁹ Without medical reasoning explaining how the accepted employment activities caused or contributed to appellant's bilateral hip condition, Dr. Tauber's earlier reports are insufficient to meet appellant's burden of proof.²⁰

Similarly, in his January 18, 2017 report, Dr. Tauber again opined that appellant's strenuous activities caused and permanently aggravated the bilateral degenerative hip arthritis. However, he failed to sufficiently discuss appellant's employment duties, only generally noting the strenuous activities appellant engaged in. While he had some understanding of these employment duties, Dr. Tauber failed to detail the number of hours per day appellant spent performing each task, and the frequency of the physical movements which appellant attributed to his injury. His statement on causation also failed to provide a sufficient explanation as to the mechanism of injury pertaining to this occupational disease claim as alleged by appellant, namely, how repetitive strenuous activities of squatting, bending, pushing, and lifting would cause or

¹⁴ See *R.W.*, Docket No. 12-0375 (issued October 28, 2013).

¹⁵ See *Melvina Jackson*, 38 ECAB 443 (1987).

¹⁶ *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

¹⁷ *Id.*

¹⁸ See *Calvin E. King, Jr.*, 51 ECAB 394 (2000); see also *Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

¹⁹ See *M.W.*, Docket No. 17-0186 (issued March 13, 2018).

²⁰ See generally, *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

aggravate his bilateral degenerative hip condition.²¹ Without explaining how physiologically the movements involved in appellant's employment duties caused or contributed to his diagnosed condition, his opinion on causal relationship is equivocal in nature and of limited probative value.²²

While the record contains February 8, 2016 MRI scan reports of the left and right hips, the Board notes that these reports are of limited probative value as the interpreting physician did not address causal relationship. The Board has held that reports of diagnostic tests are of limited probative value as they do not provide an opinion on the causal relationship between appellant's employment duties and the diagnosed conditions.²³

On appeal appellant argues that Dr. Hanley's second opinion report is confusing and not well rationalized. He contends that Dr. Tauber has been clear with his medical reasoning in all his reports. As noted above, Dr. Tauber failed to provide a well-rationalized medical report explaining how appellant's bilateral hip conditions were caused or aggravated by the accepted employment duties. Dr. Hanley provided a well-reasoned medical opinion based on a complete medical background and objective findings.²⁴ Therefore, his opinion was properly afforded the weight of the evidence.

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.²⁵ Because appellant has failed to submit a well-rationalized medical report establishing that his bilateral hip osteoarthritis was caused or aggravated by the accepted employment duties, he has failed to meet his burden of proof.²⁶

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 has not met his burden of proof to establish that his bilateral hip conditions are causally related to the accepted factors of his federal employment.

²¹ *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

²² *See L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

²³ *See S.G.*, Docket No. 17-1054 (issued September 14, 2017).

²⁴ A well-reasoned medical opinion should also be consistent with the findings upon examination. Findings may be noted during physical examination, laboratory testing, and diagnostic procedures. Sufficient objective data (findings on examination, test results) should be included in the report to support the medical conclusions. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.6(a)(2) (September 2010).

²⁵ *D.D.*, 57 ECAB 734 (2006).

²⁶ *See generally, Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2018
Washington, DC

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

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

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