United States Department of Labor
Employees' Compensation Appeals Board

G.E., Appellant	)	
and	)	**Docket No. 17-1719**
	)	**Issued: February 6, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Hampton, VA, Employer	)	

Appearances:
Stephanie N. Leet, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 3, 2017 appellant, through counsel, filed a timely appeal of a February 14, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish a left groin or hip condition causally related to the accepted April 4, 2014 employment incident.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before Board.[3] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 4, 2014 appellant, then a 50-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he strained his left groin while walking. He did not indicate on the claim form whether he stopped work.

In support of his claim appellant submitted an April 4, 2014 duty status report (Form CA-17) by Carl D. Wright, a physician assistant. Mr. Wright indicated that appellant sustained a groin strain on that date and required work restrictions.

In a May 19, 2014 report by Dr. James E. Dowd, a Board-certified orthopedic surgeon, it was noted that appellant was a mail carrier and that about seven weeks prior he had an event where he had sudden, significant pain in his groin and leg. He also noted that on May 1, 2014 appellant was unable to walk. Dr. Dowd indicated that appellant had a magnetic resonance imaging (MRI) scan and was diagnosed with significant hip arthritis. He noted that appellant continued to have significant pain in his hip, joint, and groin, and listed his impression as femoroscetabular impingement with secondary degeneration inflammation.

In a May 21, 2014 note, Tanya Fuhrman, a physician assistant, reported that appellant had received a left hip joint injection.

By decision dated May 21, 2014, OWCP denied appellant's claim. It found that he had not established that the event occurred as alleged. OWCP further found that appellant did not submit medical evidence sufficient to establish a diagnosed medical condition in connection with the alleged event.

On June 11, 2014 Dr. Dowd noted that appellant returned for treatment of his left hip arthritis issues. He diagnosed progressive left hip arthritis and noted that appellant was headed towards a hip replacement.

On July 16, 2014 appellant requested reconsideration. In support thereof, he submitted a May 5, 2014 MRI scan wherein Dr. Srineh Alle, a Board-certified radiologist, listed impressions as advanced osteoarthritic changes involving the left hip with mild joint effusion and degenerative labral tear, mild osteoarthritic changes involving the right hip with small degenerative labral tear broadening of the head/neck junction bilaterally, and no evidence of hip fracture or avascular necrosis.

Appellant also submitted a May 19, 2014 duty status report wherein Dr. Dowd indicated that appellant had hip pain and arthritis and was placed on restrictions.

[3] Docket No. 15-1688 (issued November 25, 2015).

In a May 21, 2014 note, Ms. Fuhrman noted that appellant underwent additional treatment and was able to return to work on May 22, 2014.

By decision dated October 28, 2014, OWCP denied modification of the May 28, 2014 decision.

On November 2, 2014 appellant requested reconsideration of OWCP's October 28, 2014 decision. In his letter, he explained that he was a letter carrier and was on his feet all day casing mail and walking 7 to 10 miles a day six days a week while carrying a heavy satchel and delivering mail. Appellant also noted that while in his vehicle there was a lot of in and out, up and down, and twisting and turning. He stated that he had worked for the employing establishment for 27 years. Appellant contended that the physical nature of his job took a serious toll on his body as evidenced by the medical evidence.

By decision dated January 28, 2015, OWCP denied modification of the October 28, 2014 decision.

On March 9, 2015 appellant again requested reconsideration. He stated that, while at work and delivering mail on uneven terrain, he stepped off a customer's steps and while he was starting to walk to the next house, he felt a groin pull, pop, and pain.

By decision dated June 4, 2015, OWCP determined that appellant had now met the criteria for establishing that an incident occurred in the performance of his employment duties, but found that the case should remain denied as appellant failed to submit a well-rationalized medical narrative that discussed the causal relationship between his diagnosed condition of left hip arthritis and the accepted employment incident of April 4, 2014. Appellant appealed to the Board on August 5, 2015.

On November 25, 2015 the Board affirmed the June 4, 2015 decision. The Board determined that appellant had failed to establish a causal relationship between the accepted employment incident and a medical diagnosis.[4]

On January 18, 2016 appellant, through counsel, requested reconsideration. He asserted that he had established a causal connection between his medical diagnoses including hip arthritis, and the accepted employment incident. In support thereof, appellant submitted Dr. Dowd's medical reports dated from May 19 through August 24, 2014. In these reports, Dr. Dowd discussed appellant's recovery from his July 1, 2014 left total hip replacement. He indicated that appellant had a rough postoperative course, noting that appellant was diagnosed with a pulmonary embolism and six blood clots. Appellant also had a flare-up of his Crohn's disease, and suffered from abdominal pain and a collapsed lung. Dr. Dowd also noted that appellant recently underwent a repeat ultrasound for the blood clots and was diagnosed with a blocked artery on his right lower extremity.

[4] *Id.*

By decision dated April 7, 2016, OWCP determined that the evidence of record was insufficient to modify the prior decision, noting that the evidence was repetitious and that appellant had not submitted any new evidence addressing causal relationship.

On November 16, 2016 appellant, through counsel, requested reconsideration. Counsel argued that Dr. Dowd was informed of the work incident, made a diagnosis, and explained causation. She argued that Dr. Dowd's reports were of sufficient weight to establish the claim and, as there was no contrary medical evidence, these reports should have at least established a *prima facie* case, requiring further development of the medical evidence. Counsel contended that work factors need not be the sole cause of an injury. She argued that the decision denying appellant's claim should be reversed. In support of the reconsideration request, counsel submitted a May 5, 2014 report by Dr. Heather Moseley, a Board-certified family practitioner, wherein she diagnosed severe osteoarthritis of the left hip.

By decision dated February 14, 2017, OWCP denied modification of the November 25, 2015 decision. It explained that the evidence of record continued to lack a physician's rationalized opinion which established a causal relationship been a diagnosis and the accepted April 4, 2014 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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, that an injury was sustained 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. 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.[5]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is whether the employee actually experienced the employment incident or exposure which is alleged to have occurred.[6] In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.[7]

[5] *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

[6] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

[7] *Linda S. Jackson*, 49 ECAB 486 (1998).

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8] The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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.[9]

ANALYSIS

The Board finds that appellant has failed to establish that his diagnosed hip conditions are causally related to the accepted April 4, 2014 employment incident. The medical evidence of record contains no reasoned medical explanation of how the specific employment incident of April 4, 2014 caused or aggravated a groin or hip condition.[10]

Dr. Dowd noted that about seven weeks before appellant's May 19, 2014 evaluation he had an event where he had sudden significant pain in his groin and leg and that, by May 1, 2014, he was unable to walk. He noted that a left hip MRI scan showed significant hip arthritis and that appellant continued to have significant pain in his hip, joint, and groin. Dr. Dowd listed his impression as femoroscetabular impingement with secondary degeneration inflammation. On June 11, 2014 he noted that appellant had progressive left hip arthritis. Dr. Dowd indicated that on July 1, 2014 appellant underwent a left total hip replacement. He noted that appellant had a rough postoperative course. However, at no time did Dr. Dowd discuss how appellant's accepted employment incident of April 4, 2014 caused appellant's diagnosed left hip conditions. The mere recitation of patient history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.[11] Without explaining physiologically how the accepted walking incident on April 4, 2014 caused or contributed to the diagnosed conditions, Dr. Dowd's reports are of limited probative value.[12]

Similarly, Dr. Moseley diagnosed severe osteoarthritis of the left hip, but gave no opinion on causal relationship. The Board has found that medical evidence that does not offer any opinion regarding the cause of the employee's condition is of limited value on the issue of causal relationship.[13]

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[8] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

[9] *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

[10] *A.C.*, Docket No. 16-0452 (issued October 27, 2017).

[11] *See J.G.*, Docket No. 17-1382 (issued October 18, 2017).

[12] *See A.B.*, Docket No. 16-1163 (issued September 8, 2017).

[13] *L.L.*, Docket No. 17-0908 (issued September 11, 2017).

The remaining evidence is also insufficient to establish causal relationship. Dr. Alle interpreted a May 5, 2014 MRI scan as showing advanced osteoarthritic changes involving the left hip with mild joint effusion and degenerative labral tear broadening of the head/neck junction. This diagnostic study is of limited probative value. Although Dr. Alle's report established a medical diagnosis, it did not address any relationship between these diagnoses and appellant's accepted injury of April 4, 2014.[14] Diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[15]

Finally, appellant submitted reports from physician assistants. However, physician assistants are not considered physicians under FECA, and therefore, their respective reports will not suffice for purposes of establishing entitlement to FECA benefits.[16]

Because the medical reports submitted by appellant failed to address how the April 4, 2014 employment incident caused or aggravated a left shoulder condition, these reports are of limited probative value and are insufficient to establish that the April 4, 2014 employment incident caused or aggravated appellant's diagnosed conditions.[17]

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[18] Appellant's honest belief that the April 4, 2014 employment incident caused his medical conditions is not in question, but that belief, however sincerely held, does not constitute the medical evidence to establish causal relationship.[19]

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 his burden of proof to establish a left groin or hip condition causally related to the accepted April 4, 2014 employment incident.

[14] *See G.M.*, Docket No. 14-2057 (issued May 12, 2015).

[15] *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[16] 5 U.S.C. § 8101(2) (this subsection defines physicians as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law). *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under the FECA); *Sean O'Connell*, 56 ECAB 195 (2004) (reports by physician assistants are not considered medical evidence as they are not considered physicians under the FECA).

[17] *See Linda I. Sprague*, 48 ECAB 386 (19797).

[18] *D.D.*, 57 ECAB 734 (2006).

[19] *H.H.*, Docket No. 16-0897 (issued September 21, 2016).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 14, 2017 is affirmed.

Issued: February 6, 2018
Washington, DC

Christopher J. Godfrey, 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