

FACTUAL HISTORY

On August 17, 2012 appellant, then a 55-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed permanent aggravation of right knee and hip osteoarthritis as a result of performing repetitive work duties. She indicated that she first became aware of her condition on September 21, 2009 but did not relate it to factors of her federal employment until July 12, 2012. Appellant did not stop work.

Appellant provided an undated statement describing her work duties with the employing establishment since March 22, 2003 when she was a part-time flexible letter carrier. On August 6, 2005 she became a regular carrier and her route consisted of parking and looping one or two streets at a time by going up one side of the street and down the other, returning to the postal vehicle and gathering more mail for the next park and loop. Appellant noted that in the morning she sorted and cased mail for her route which required her to stoop, stand, twist, bend, reach, and walk. She moved mail to the netting truck, out to the loading dock to load in the postal vehicle, which required stooping, twisting, bending, lifting, and walking. Appellant reported getting in and out of her vehicle 75 times daily and making about 528 deliveries daily with about 268 of the deliveries including steps or stairs. In 2005, she sought treatment for right knee pain, was diagnosed with a meniscus tear, and had arthroscopic surgery. Appellant's physician did not accept workers' compensation cases so she used her own medical insurance to cover expenses.³

Appellant was treated by Dr. Byron V. Hartunian, a Board-certified orthopedist, on July 12, 2012 for right knee and right hip pain. Dr. Hartunian noted appellant's work as a letter carrier since March 22, 2003 which required her to mount and dismount her truck 150 times a day, make about 500 deliveries a day, carry a satchel weighing 35 pounds, and walk four to five miles a day. Appellant's job required repetitive standing, stooping, bending, kneeling, climbing, twisting, pivoting, squatting, lifting, carrying, and reaching activities. She related having right knee arthroscopic surgery on January 12, 2005. Appellant returned to modified duties and then full work duties within two months of surgery. Examination revealed an antalgic limp, restricted right hip range of motion, moderate tenderness to deep palpation of the anterior hip, restricted right knee range of motion, mild medial collateral ligament laxity, palpable effusion at the right knee, and marked tenderness to palpation along the medial joint line. Dr. Hartunian diagnosed degenerative arthritis of the right hip with narrowing of superior femoral acetabular joint space to two millimeters (mm) of cartilage interval, degenerative arthritis (primary knee joint arthritis) of the right knee with narrowing of the medial femorotibial joint space to one mm of cartilage interval and mild medial collateral ligament laxity of the right knee. He reviewed appellant's job description which included carrying a 35-pound bag of mail, lifting up to 70 pounds, walking 5 to 10 miles daily, going up and down steps, walking on uneven terrain, and frequent reaching, stooping, squatting, and bending. Dr. Hartunian opined that the repetitive heavy physical activities resulted in increased stress through appellant's knee and hip causally contributing to the permanent progression of her arthritis. Therefore, there was a direct causal relationship between appellant's right torn meniscus and her progressive disabling arthritis as the nature of

³ On January 12, 2005 Dr. Gregory W. Sofhikian, a Board-certified orthopedist, performed a partial medial meniscectomy and chondroplasty of the lateral tibial plateau.

her job permanently hastened and accelerated an existing degenerative process in her right knee and hip.

In a September 24, 2012 letter, OWCP advised appellant to submit additional information including a comprehensive medical report from her treating physician with a reasoned explanation regarding causal relationship. Appellant did not submit the requested information.

In a December 3, 2012 decision, OWCP denied appellant's claim, finding that she failed to establish that her claimed condition was causally related to the accepted factors of her federal employment.

Appellant requested an oral hearing before an OWCP hearing representative. In a March 20, 2013 decision, the hearing representative vacated the December 3, 2012 decision and remanded the case for further medical development. Thereafter, OWCP referred appellant to a second opinion physician.

In a July 5, 2013 report, Dr. Lawrence Leonard, a Board-certified orthopedic surgeon, opined that appellant's work activities permanently aggravated her underlying right knee arthritis, but found she had no established right hip diagnosis that could be related to her employment.

By decision dated July 23, 2013, OWCP accepted appellant's claim for permanent aggravation of preexisting osteoarthritis of the right knee. However, it did not accept aggravation of osteoarthritis of the right hip and right hip trochanteric bursitis.

On July 25, 2013 appellant requested an oral hearing. On October 8, 2013 she withdrew her request for an oral hearing and instead requested a review of the written record.

Appellant submitted an August 22, 2013 report from Dr. Hartunian who restated appellant's work and medical history, including the details of her daily work duties, as well as reiterating that her job required multiple repetitive activities. She had ongoing stiffness, pain, and instability about the right hip and the right knee. Dr. Hartunian diagnosed degenerative arthritis (primary knee joint arthritis) of the right knee with narrowing of the medial femorotibial joint space to one mm of cartilage interval, and mild medial collateral ligament laxity of the right knee. He noted that appellant reached maximum medical improvement of her right knee on January 12, 2005 when the arthroscopic surgery documented the arthritic changes of the medial joint. Dr. Hartunian opined that the acceleration and hastening of the underlying arthritic process by her arduous physical duties was permanent and continuing. He also assessed appellant's permanent impairment for schedule award purposes.⁴

In a decision dated April 1, 2014, an OWCP hearing representative set aside the July 23, 2013 decision, finding that there was a conflict in the medical opinion evidence between Dr. Hartunian and OWCP's referral physician, as to whether appellant developed a right hip condition causally related to her federal employment duties.

⁴ Matters pertaining to a schedule award are not before the Board on the present appeal.

To resolve the conflict, on April 22, 2014, OWCP referred appellant to a referee physician, Dr. Gary P. Francke, a Board-certified orthopedist. In a May 27, 2014 report, Dr. Francke diagnosed greater right trochanteric pain syndrome and mild congenital narrowing of the right hip joint without evidence of degenerative arthritis or degenerative changes. He opined that the diagnosed conditions were not caused, aggravated, accelerated, or precipitated by work factors, rather the lateral hip pain was caused by disease of the gluteal tendons (age related and degenerative changes) that secondarily inflamed the bursa.

In a decision dated June 26, 2014, OWCP denied appellant's claim for a right hip condition based on Dr. Francke's report. On July 16, 2014 appellant requested an oral hearing. On November 19, 2014 she withdrew her request for an oral hearing and requested a review of the written record. Appellant submitted x-ray reports of the pelvis and bilateral hip dated December 17, 2014.

In a decision dated February 26, 2015, an OWCP hearing representative affirmed the June 26, 2014 decision.

On February 17, 2016 counsel requested reconsideration. He contended that OWCP did not follow its procedures in referring appellant to Dr. Francke and that OWCP did not comply with FECA and OWCP procedures in providing Dr. Francke with definitions of the terms contribution and acceleration with regard to causal relationship. Counsel also submitted additional medical evidence. In a February 9, 2016 report, Dr. Hartunian reviewed both the second opinion physician and the referee physician's reports and disagreed with their findings. He diagnosed degenerative arthritis of the right hip with narrowing of superior femoral acetabular joint space to two mm of cartilage interval and significant joint space narrowing. Dr. Hartunian explained that the impact from repeated local stresses accelerated the progression of arthritis through chronic inflammation. He noted that appellant's job required constant and repetitive walking, squatting, stooping, climbing, bending, lifting, carrying, stair climbing, and twisting activities which exerted repeated local stresses causing chronic inflammation. Dr. Hartunian opined that osteoarthritis was no longer considered a process of aging cartilage as chronic local stresses and ergonomic stresses such as knee bending, kneeling, and squatting may constitute long-term stresses leading to osteoarthritis.

In a decision dated May 13, 2016, OWCP denied modification of the February 26, 2015 decision.

On April 28, 2017 counsel requested reconsideration. In a supporting memorandum, he asserted that it was an error of law to deny appellant's claim as OWCP failed to provide the referee physician with the proper causation standard and OWCP's procedural definition of acceleration. Counsel noted that Dr. Hartunian provided July 12, 2012 and February 9, 2016 reports explaining the work-related impact loading activities contributed to the progression of her right hip osteoarthritis. He asserted that Dr. Hartunian's April 18, 2017 report provided a sufficient explanation of the causal relationship. Counsel indicated that the referee physician's opinion was based on outdated x-ray evidence from 2011 and were unpersuasive. He contended that appellant had provided more than ample evidence to accept that her work activities contributed to the aggravation of her right hip osteoarthritis and that this aggravation was

permanent. Appellant also submitted an April 12, 2017 statement reiterating her work history and repetitive job duties.

Appellant submitted an April 18, 2017 report from Dr. Hartunian, which diagnosed degenerative arthritis of the right hip with narrowing of the superior femoral acetabular joint space to 2 mm of cartilage interval. He opined that appellant had degenerative osteoarthritis of her right hip that was aggravated by her work activities as a letter carrier which required repetitive lifting, walking, and climbing. Dr. Hartunian advised that this likely aggravated her underlying hip condition and caused permanent aggravation of her right hip osteoarthritis. Dr. Hartunian noted the cartilage of her right hip was degraded causing a permanently impairing condition. He opined that the job of a letter carrier and clerk over a long career accelerated arthritis because of the continuous walking, stooping, and squatting. Dr. Hartunian reiterated that appellant had a 14-year career as a letter carrier and clerk which hastened her osteoarthritis as the positions required daily, repetitive walking, standing, squatting, stooping, climbing, bending, lifting, carrying, stair climbing, and twisting activities. He opined that there was no doubt that the high-impact loading work activities engaged in by appellant for 14 years contributed to the development and progression of her right hip arthritis.

In an July 13, 2017 decision, OWCP denied appellant's April 28, 2017 request for reconsideration as the evidence submitted was insufficient to warrant a merit review

LEGAL PRECEDENT

Under section 8128(a) of FECA,⁵ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁶

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁷

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b)(3).

⁷ *Id.* at § 10.608(b).

ANALYSIS

OWCP denied appellant's claim because she had failed to provide sufficient medical evidence to establish that the diagnosed conditions of aggravation of osteoarthritis of the right hip and right hip trochanteric bursitis were causally related to her accepted federal employment duties. Thereafter, it denied appellant's reconsideration request, without a merit review.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In her request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not advance a new and relevant legal argument. In an April 18, 2017 memorandum, counsel asserted that it was an error of law to deny her claim as OWCP did not provide the referee physician with the proper causation standard for acceleration under OWCP's procedures. However, he previously raised this same argument before OWCP. Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.⁸ Counsel further asserted that Dr. Hartunian's reports provided sufficient explanation of the causal relationship between her high-impact loading activities and right hip osteoarthritis. This does not show a legal error by OWCP nor represents a new and relevant legal argument. The underlying issue in this case is whether appellant developed an aggravation of osteoarthritis of the right hip and right hip trochanteric bursitis causally related to factors of her federal employment. That is a medical issue which must be addressed by relevant new medical evidence.⁹ Counsel's own interpretation of medical reports is not relevant evidence with respect to causal relationship.¹⁰

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by OWCP, appellant submitted an April 18, 2017 report from Dr. Hartunian. While this report is new, it is not relevant as it is similar to his reports dated July 12, 2012, August 22, 2013, and February 9, 2016 which were previously submitted and were considered by OWCP in its earlier decisions dated July 23, 2013, June 26, 2014, February 26, 2015, and May 13, 2016 and found to be deficient. As noted, evidence that repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹¹ Therefore, this report is insufficient to require OWCP to reopen the claim for a merit review.

Appellant also submitted an April 12, 2017 statement that reiterated her work history and repetitive job duties. While this document is new to the record, it is not relevant to the medical issue for which OWCP denied appellant's claim, the failure to establish that appellant developed right hip conditions causally related to factors of her federal employment.¹² The submission of

⁸ *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁹ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁰ *See S.R.*, Docket No. 15-0658 (issued June 8, 2015).

¹¹ *See supra* note 9.

¹² *See R.B.*, Docket No. 16-0345 (issued April 21, 2016).

evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹³ Therefore, this document does not constitute a basis for reopening appellant's claim.¹⁴

On appeal appellant asserts that her injuries were directly related to her job and that she submitted sufficient medical evidence from her physician to support her occupational disease claim. As explained, the Board does not have jurisdiction over the merits of the claim.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or constitute relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹³ *M.M.*, Docket No. 10-0224 (issued October 6, 2010).

¹⁴ *See W.D.*, Docket No. 09-0658 (issued October 22, 2009) (causal relationship is a medical issue).

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 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