United States Department of Labor
Employees' Compensation Appeals Board

A.P., Appellant	)	
and	)	**Docket No. 17-0813**
	)	**Issued: January 3, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Boston, MA, Employer	)	

Appearances:
Benjamin R. Zimmerman, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 1, 2017 appellant, through counsel, filed a timely appeal from a February 7, 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.[3]

[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.*

[3] Appellant timely requested an oral argument before the Board. By order dated July 26, 2017, the Board exercised its discretion and denied appellant's request for an oral argument, finding that appellant's arguments on appeal could adequately be addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 17-0813 (issued July 26, 2017).

ISSUE

The issue is whether appellant met his burden of proof to establish a permanent aggravation of right hip osteoarthritis causally related to factors of his federal employment.

FACTUAL HISTORY

On March 31, 2015 appellant, then a 61-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained an aggravation of osteoarthritis of the hips as a result of his federal employment duties. He first became aware of his condition and its relation to his federal employment on November 25, 2014. Appellant did not stop work. He submitted a position description with the duties and requirements of a letter carrier.

In a statement dated October 21, 2014, appellant indicated that when his left hip pain started in March 2012 he initially thought he had pulled a groin muscle. He related that after six months his left hip still hurt, so his doctor referred him to an orthopedic specialist. Appellant explained that he underwent an x-ray examination and was told that he had arthritis in his bilateral hips, left worse than right. He explained that he had worked for the employing establishment since April 1988 and had worked in three different cities delivering mail and packages and doing relay runs. Appellant noted that his route required walking with a satchel on his left shoulder and lifting and carrying a minimum of 35 pounds in his bag. He also noted that some packages weighed 50 to 70 pounds.

Appellant submitted a November 26, 2012 report from Dr. John F. Yee, a family practitioner. Dr. Yee related appellant's complaints of left groin pain and noted that appellant worked as a mail carrier. Upon physical examination of appellant's hips, he reported nontenderness with palpation and range of motion. Dr. Yee diagnosed left groin pain.

In a December 3, 2012 report, Dr. John J. Lynch, a Board-certified orthopedic surgeon, noted a diagnosis of early degenerative left hip arthritis. He related that appellant worked as a letter carrier and had complained of left groin discomfort for the past three to four months. Dr. Lynch reviewed appellant's history and conducted an examination. He reported mild restriction of internal rotation of appellant's left hip with groin discomfort and no tenderness or swelling. Dr. Lynch indicated that an x-ray scan of appellant's pelvis and left hip showed early mild narrowing of the hip joint with mild peripheral spurring. He opined that appellant's physical examination findings and x-ray scans were consistent with early degenerative arthritis of his left hip.

Dr. Lynch continued to treat appellant and in a March 4, 2013 report indicated that appellant was doing quite well using pain medication. He provided examination findings and reported that there had been no significant worsening of appellant's symptoms over the past three months.

Appellant underwent a bilateral hip x-ray examination by Dr. Brady J. McKee, a Board-certified diagnostic radiologist. In a March 3, 2014 report, Dr. McKee noted marked osteoarthritis of appellant's left hip with complete superior joint space low and sclerosis within the left femoral head and superior left acetabulum. He reported moderate degenerative changes

of the right hip with lateral acetabular spurring and osseous protuberance of the right femoral head neck junction.

In reports dated January 17 and March 3, 2014, Dr. Lawrence M. Specht, a Board-certified orthopedic surgeon, indicated that appellant worked as a mail carrier, which required him to walk a few miles per day with considerable stairs. He reviewed appellant's history and noted that appellant complained of increasing left hip pain for over a year. Upon physical examination of appellant's left hip, Dr. Specht reported that appellant walked with a significant left antalgic gait and had pain with deep squatting. He further noted considerable pain with flexion of appellant's hip approaching 90 degrees and severe pain with internal rotation to negative 5 degrees or with further external rotation. Trendelenburg sign was positive with a single leg stance. Dr. Specht diagnosed progressive arthritis. He noted that appellant was scheduled for left hip surgery on March 12, 2014.

On March 12, 2014 appellant underwent left anterior total hip arthroplasty surgery.

Appellant subsequently underwent a bilateral hip x-ray examination by Dr. Carl R. Larsen, a diagnostic radiologist. In an April 29, 2014 report, Dr. Larsen noted slight degenerative changes of the right femoral head and satisfactory left hip arthroplasty. He related that the x-ray examination was otherwise normal.

In reports dated April 29 to August 19, 2014, Heather Torre, a certified physician assistant, indicated that appellant was doing well and had returned to full duty since his left hip surgery. Upon physical examination of appellant's left hip, she noted good, pain free range of motion and smooth, symmetrical gait with walking. Ms. Torre diagnosed status post left anterior total hip arthroplasty.

Appellant underwent another bilateral hip x-ray examination. In an August 19, 2014 report, Dr. Anita Uppin, a Board-certified diagnostic radiologist, related appellant's complaints of left hip pain. She reported left total hip arthroplasty with anatomic alignment and degenerative changes with rim osteophyte along the right hip.

In a February 20, 2015 radiology report, Dr. Justin W. Kung, a Board-certified diagnostic radiologist, indicated that he reviewed appellant's pelvic and left hip radiographs dated August 19, 2014. He noted a narrowed right femoracetabular joint with a joint space interval at two millimeters and additional findings consistent with a moderate amount of degenerative changes with osteophyte formation and subchondral sclerosis. Dr. Kung noted that appellant had left total hip arthroplasty.

Appellant was also treated by Dr. Byron Hartunian, an orthopedic surgeon. In a March 17, 2015 report, Dr. Hartunian related that appellant had worked as a letter carrier for the employing establishment since April 1988. He described appellant's employment duties as requiring mostly walking, driving a truck while doing relay work, and repetitive lifting, squatting, bending, stooping, twisting, climbing, and reaching activities. Dr. Hartunian noted that appellant also had to lift, move, and carry up to 70 pounds. He related that appellant began to experience left groin pain in the spring of 2012, but noted no particular trauma to his hips. Dr. Hartunian discussed the medical treatment that appellant received and noted that a

January 17, 2014 x-ray scan showed marked osteoarthritis of the left hip and moderate degenerative changes of the right hip. He indicated that appellant underwent left hip surgery on March 12, 2014 and returned to full duty by the end of July 2014. Dr. Hartunian reported that appellant's left hip pain had greatly diminished since the surgery, but he still experienced pain, mild stiffness, and restricted mobility in his right hip.

Upon physical examination of appellant's left hip, Dr. Hartunian reported no tenderness and no pain on flexion and rotation of the left hip. Examination of appellant's right hip showed palpable tenderness and pain on flexion and rotation. Dr. Hartunian diagnosed status post left total hip arthroplasty for end-stage degenerative arthritis and right hip arthritis with moderate narrowing of the superior femoroacetabular joint. He reported that appellant had reached maximum medical improvement of the left total hip replacement on August 19, 2014 and of his left hip arthritis on January 17, 2014. Dr. Hartunian discussed the medical condition of arthritis and the stresses that accelerated the progression of arthritis. He referenced various studies, which supported the case that appellant's job duties was a causative contributive factor in the development and progression of his lower extremity arthritis. Dr. Hartunian explained that the studies supported appellant's claim because "[appellant's] job duties included the offending activities cited in these studies as causative contributing factors to the development and progression of lower extremity arthritis."

In a letter dated April 27, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish his occupational disease claim. It requested that he respond to the attached development questionnaire in order to substantiate the factual element of his claim and submit additional medical evidence to establish that his alleged bilateral hip condition was caused or aggravated by his employment. Appellant was afforded 30 days to submit the requested information. OWCP issued a similar letter dated April 27, 2015 to the employing establishment.

In a May 26, 2015 letter, counsel noted that the employment factors alleged to have caused appellant's injury were high-impact loading activities that exert repeated local stresses on the lower extremities such as lifting, carrying, bending, twisting, stooping, and stair climbing. He further alleged that Dr. Hartunian's March 17, 2015 narrative report addressed the issue of causation in clear and explicit detail. Counsel asserted that since appellant met the five basic elements of his claim under FECA, OWCP should accept his claim.

OWCP received appellant's response to its development letter. Appellant explained that he had provided a detailed description of the employment-related activities he believed contributed to his condition in a previous statement and the position description of a letter carrier. He indicated that he had performed these activities each day for the past 27 years. Appellant noted that his medical records also mentioned his complaints of pain with prolonged sitting, prolonged walking, twisting, bending, and climbing stairs. He related that he was not aware of the relationship between his bilateral hip condition and his employment until he was examined by Dr. Hartunian. Appellant clarified that he was no longer receiving medical treatment from Drs. Yee, Specht, or Lynch and considered Dr. Hartunian to be his treating physician.

OWCP referred appellant's claim, along with a statement of accepted facts (SOAF) and a copy of the medical record, to Dr. Christopher B. Geary, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether appellant's federal work duties caused, aggravated, or accelerated appellant's underlying degenerative hip conditions. The SOAF provided a detailed list of the accepted physical duties, activities, and requirements performed by appellant in his position of letter carrier.

In a September 14, 2015 narrative report, Dr. Geary noted that he reviewed the SOAF and the medical record. He related that appellant had worked as a letter carrier for the employing establishment and complained of left hip pain since 2012. Dr. Geary discussed the medical treatment that appellant received and noted that he underwent left hip surgery on March 12, 2014. Upon physical examination of appellant's right hip, he reported no tenderness to palpation and no pain throughout range of motion. Dr. Geary indicated that appellant had full motor strength throughout the right hip. Examination of appellant's left hip revealed a well-healed surgical incision on the anterior aspect of the leg consistent with his previous anterior hip approach. Dr. Geary provided range of motion findings and noted no pain and full motor strength. He reported that appellant's bilateral hip osteoarthritis was a chronic preexisting degenerative condition, which was not caused by his work-related activities. Dr. Geary further explained that appellant's right hip arthritis was temporarily aggravated by his work conditions. He opined that appellant's temporary aggravation would cease within one month after ceasing work-related activities. Regarding appellant's left hip, Dr. Geary indicated that appellant's work activities, as set forth in the SOAF, permanently aggravated appellant's preexisting osteoarthritis. He explained that the left hip was a permanent aggravation as appellant had to undergo left total hip arthroplasty surgery.

OWCP accepted appellant's claim for permanent aggravation of left hip osteoarthritis and temporary aggravation of right hip osteoarthritis, based on the second opinion report of Dr. Geary.[4]

On September 6, 2016 appellant, through counsel, requested reconsideration and asserted that he had sustained a permanent aggravation of right hip osteoarthritis. In an attached memorandum, counsel alleged that it was error to give any probative value to the second opinion physician's speculative opinion that the aggravation of appellant's right hip osteoarthritis "would cease." He cited various decisions where the Board rejected a medical opinion because it was speculative. Counsel also asserted that it was erroneous for Dr. Geary to label the aggravation of appellant's right hip osteoarthritis as "temporary" since OWCP's procedures defined a permanent aggravation as a condition that would persist indefinitely. He noted that Dr. Geary concluded that appellant's right hip arthritis would cease when his work activities cease, but indicated that appellant has no plans to stop work so it was indefinite for how long appellant's work activities, and consequently his right hip osteoarthritis, would persist. Counsel alleged that

[4] On November 9, 2015 OWCP received appellant's request, through counsel, for an oral hearing before an OWCP hearing representative. By decision dated December 2, 2015, it denied appellant's request for an oral hearing as it was not timely filed within 30 days of the October 6, 2015 OWCP decision. OWCP exercised its discretion and determined that appellant's claim could equally well be addressed by requesting reconsideration and submitting evidence not previously considered by OWCP.

Dr. Hartunian's reports explained quite clearly that appellant's right knee arthritis was permanently aggravated by his work activities.

In a narrative statement, appellant explained that he had worked as a full-time, full-duty letter carrier since 1988 and that all his routes were either walking or park and loop routes. He noted that he continued to work as a letter carrier, despite the constant right hip pain. Appellant provided a detailed discussion of how he performed his work duties and the physical requirements of his job. He reiterated that his work-related activities had not ceased and explained that as he had no present plans to retire, his right hip osteoarthritis would continue indefinitely.

Appellant submitted an August 30, 2016 report by Dr. Hartunian. Dr. Hartunian explained that osteoarthritis no longer had a natural progression or ordinary course and was not considered a disease of aging, citing to a scholarly article. He indicated that referring to the "natural course" of osteoarthritis was outdated and inconsistent with the current state of medical knowledge. Dr. Hartunian reported:

> "Due to the nature of the disease, all aggravations of arthritis were and must be permanent. Degenerative arthritis (it is called 'degenerative' for a reason) is the loss of articular cartilage. Aggravation of arthritis contributes to the deterioration of the articular cartilage. Once lost, the articular cartilage can never be regained, *i.e.*, revert back to a decreased level of severity."

By decision dated February 7, 2017, OWCP denied modification of its October 6, 2015 decision. It found that the medical evidence of record was insufficient to establish that he sustained any additional conditions as a result of factors of his federal employment.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[5] To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[7] 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

[5] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[6] *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[7] *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

identified by the employee.[8] Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[9]

ANALYSIS

OWCP accepted appellant's claim for permanent aggravation of left hip osteoarthritis and temporary aggravation of right hip osteoarthritis. On September 6, 2016 appellant, through counsel, requested reconsideration, alleging that he had established a permanent aggravation of right hip osteoarthritis.

The Board finds that the case is not in posture for decision.

In support of his claim appellant submitted medical reports from his attending physician, Dr. Hartunian, who addressed the impact of appellant's employment duties on his bilateral hip conditions. In a March 17, 2015 report, he accurately described appellant's employment duties as a letter carrier for the employing establishment. Dr. Hartunian noted that appellant began to experience left groin pain in the spring of 2012 and discussed the medical treatment that appellant had received. He related that appellant was diagnosed with left hip osteoarthritis, which resulted in left hip surgery on March 12, 2014, and subsequent degenerative changes of the right hip. Dr. Hartunian reported examination findings of palpable tenderness and pain on flexion and rotation. He opined that appellant's job duties were "causative contributing factors to the development and progression of lower extremity arthritis."

OWCP thereafter undertook further development of appellant's claim by referring him to Dr. Geary for a second opinion evaluation. In his September 14, 2015 report, Dr. Geary opined that appellant sustained a permanent aggravation of left hip osteoarthritis and a temporary aggravation of right hip osteoarthritis causally related to his federal employment. He related that appellant had worked as a letter carrier for the employing establishment and noted his review of the SOAF. Dr. Geary indicated that appellant had complained of left hip pain since 2012 and discussed the medical treatment he had received, but noted that he had no work-related injury to either hip. Upon physical examination of appellant's right hip, he reported no tenderness to palpation and no pain throughout range of motion. Dr. Geary provided an opinion that appellant's right hip arthritis was temporarily aggravated by his employment, but provided no explanation or basis for such a conclusory opinion.[10] The Board finds that while Dr. Geary provided an opinion on his own physical examination findings, he premised his opinion on the fact that appellant did not have a prior work-related injury which would have precipitated his arthritic condition. He was provided with a detailed SOAF which noted all of the accepted duties, activities, and requirements of the letter carrier position, but Dr. Geary did not provide

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[9] *Jennifer Atkerson*, 55 ECAB 317 (2004).

[10] *J.D.*, Docket No. 14-2016 (issued February 27, 2015) (a mere conclusory opinion provided by a physician, without the necessary rationale explaining how and why the work factors were insufficient to result in diagnosed medical conditions, is insufficient to be granted the weight of the evidence).

any medical rationale as to how or why those specific employment duties were insufficient to cause or permanently aggravate the right hip arthritis.[11]

Appellant also submitted an August 30, 2016 report, in which Dr. Hartunian responded to Dr. Geary's report by citing various scholarly articles and indicating that osteoarthritis was no longer considered a condition with a natural progression or ordinary course. Dr. Hartunian reported that "due to the nature of the disease, all aggravations of arthritis were and must be permanent." However, he provided little medical rationale to explain how the medical articles he cited had application to appellant's particular situation.[12] Dr. Hartunian only provided a generalized statement that all aggravations of arthritis were permanent. Generalized statements are, however, of little probative value.[13] He also did not provide a sufficient medical explanation of how or why appellant had sustained a permanent aggravation of right hip osteoarthritis as a result of factors of the accepted duties of his federal employment. Dr. Hartunian's reports, therefore, are insufficient to establish appellant's claim.

The remaining medical evidence of record does not provide any opinion on the issue of whether appellant has a permanent right hip injury causally related to factors of his federal employment. In reports dated December 3, 2012 and March 4, 2013, Dr. Lynch related appellant's complaints of left groin and hip pain. He provided examination findings and noted diagnosis of early degenerative left hip arthritis. The Board notes that Dr. Lynch's reports only pertain to appellant's left hip condition, and provided no diagnosis or discussion regarding appellant's right hip osteoarthritis condition. Accordingly, these reports fail to establish appellant's claim.[14] Likewise, Dr. Yee's November 26, 2012 report, Dr. Specht's January 17 and March 3, 2014 reports, and Dr. Kung's February 20, 2015 radiology report also documented medical treatment for appellant's left hip, but did not contain any diagnosis or discussion of appellant's permanent aggravation of right hip osteoarthritis condition.[15]

Appellant also submitted various diagnostic examination reports. In Dr. McKee's March 3, 2014, Dr. Larsen's April 29, 2014, and Dr. Uppin's August 19, 2014 x-ray reports, the physicians noted diagnoses of degenerative changes of appellant's right hip. While the diagnostic reports contained diagnoses of appellant's right hip degenerative condition, none of the physicians opined whether appellant's degenerative changes were permanent or whether his condition resulted from appellant's employment duties. As these diagnostic reports do not address the issue of temporary or permanent aggravation, and causal relationship, they are of limited probative value.[16]

[11] *R.M.*, Docket No. 16-0147 (issued June 17, 2016).

[12] *See J.H.*, Docket No. 17-0248 (issued May 10, 2017).

[13] *See generally M.M.*, Docket No. 14-1488 (issued November 19, 2014).

[14] *See generally I.D.*, Docket No. 10-2312 (issued July 25, 2011). To be of probative value a medical report must diagnose a medical condition and discuss causal relationship.

[15] *Id*.

[16] *See T.M.*, Docket No. 17-0068 (issued April 6, 2017).

Appellant was also treated by Ms. Torre, a certified physician assistant, who provided examination notes dated April 29 to August 19, 2014. These notes, however, fail to establish appellant's claim because physician assistants are not considered physicians as defined under FECA and their medical opinions regarding diagnosis and causal relationship are of no probative value.[17] Thus, the Board finds that appellant has not met his burden of proof.

After consideration of the medical evidence of record, the Board finds that although Dr. Geary provided an opinion that appellant's right hip arthritic condition was not a permanent condition, his opinion was conclusory as he did not support his opinion with probative medical rationale.[18] Furthermore, he implied that because appellant had not sustained a prior traumatic work injury that his arthritic condition could not have been aggravated due to his employment. Dr. Geary did not specifically address how or why the accepted duties, activities, and responsibilities of appellant's federal employment, as set forth in the SOAF, were insufficient to result in a permanent aggravation of his right hip condition, nor did he provide a well-reasoned explanation as to how a progressed arthritic condition would be temporary in nature or return to a baseline condition once aggravated.

It is well established that proceedings under FECA are not adversarial in nature and that while the employee has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence in order to see that justice is done.[19] Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.[20] After undertaking development by scheduling a second opinion examination with Dr. Geary on the issue of causal relationship, OWCP was responsible for obtaining a rationalized medical opinion on this issue. As Dr. Geary did not provide such a reasoned opinion, he should be requested to provide probative medical rationale in support of his prior opinion relating to appellant's right hip condition. If he is unable or unwilling to do so, a new second opinion examination should be scheduled in accordance with OWCP procedures.[21]

[17] 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005). Section 8102(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also K.A.*, Docket No. 16-1330 (issued December 28, 2016) a physician assistant is not a "physician" under FECA.

[18] *Supra* note 11.

[19] *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

[20] *See B.C.*, Docket No. 15-1853 (issued January 19, 2016).

[21] OWCP's procedures provide that, if a second opinion specialist submits an opinion which is equivocal, lacks rationale, or fails to address the specified medical issues, the claims examiner should seek clarification or further rationale from that physician. When OWCP undertakes to develop the evidence by referring the case to an Office-selected physician, it has an obligation to seek clarification from its physician upon receiving a report that did not adequately address the issues that OWCP sought to develop. As such, the claims examiner should seek clarification from the referral physician and request a supplemental report to clarify specifically-noted discrepancies or inadequacies in the initial second opinion report. Only if the second opinion physician does not respond, or does not provide a sufficient response after being asked, should the claims examiner request scheduling with another physician. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.9(j) (September 2010).

Following this and any necessary further development on this issue of causal relationship, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds this case not in posture for a decision.

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this opinion of the Board.

Issued: January 3, 2018
Washington, DC

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

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

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