

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met her burden of proof to establish a traumatic left hip injury, causally related to the accepted April 15, 2016 work incident.

FACTUAL HISTORY

On April 20, 2016 appellant, then a 47-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that, on April 15, 2016, she was sweeping mail on automation machine number 24 and loading mail into containers when she heard an "unusual noise" in her left hip followed by the immediate onset of pain and limping. She stopped work on April 16, 2016. Appellant sought treatment at a hospital emergency room. Unsigned April 16, 2016 discharge instructions note a diagnosis of dislocation of internal left hip prosthesis.

Dr. Michael D. Baratz, an attending Board-certified orthopedic surgeon, noted in an April 26, 2016 report that appellant presented to a hospital "emergency room on April 16, 2016 with a fractured polyethylene liner of her left total hip arthroplasty." He held her off work until three months after revision surgery scheduled for May 6, 2016.

In a May 27, 2016 letter, OWCP notified appellant of the additional evidence needed to establish her claim, including a report from her attending physician diagnosing an injury resulting from the claimed April 15, 2016 incident, and explaining how and why sweeping mail and loading containers would result in a fracture of her left hip prosthesis. It also requested that she provide a detailed factual statement regarding the circumstances of the claimed injury. OWCP afforded appellant 30 days to submit such evidence.⁴ Appellant did not submit the requested information within the time allotted.

By decision dated June 30, 2016, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the claimed incident occurred as alleged. It also noted that the medical evidence of record did not address causal relationship between the alleged incident and the claimed left hip injury.

In a July 22, 2016 letter, received by OWCP on July 25, 2016, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Counsel provided a January 20, 2017 memorandum contending that additional evidence was sufficient to meet appellant's burden of proof.

At the hearing, held on January 25, 2017, counsel contended that additional medical and factual evidence established that appellant was injured while sweeping mail at work on

³ 5 U.S.C. § 8101 *et seq.*

⁴ On June 29, 2016 OWCP granted appellant's request to change physicians from Dr. Baratz to Dr. Byron Hartunian, a Board-certified orthopedic surgeon.

April 15, 2016. Appellant submitted a January 18, 2017 narrative statement, alleging that at 10:30 p.m. on April 15, 2016 she turned to the left while sweeping mail in a crouched position and felt a pop in her left hip, which “got stiffer and made a squeaking sound” when she moved. She reported this incident to her supervisor.

Also submitted was a January 18, 2017 statement from appellant’s sister, noting that she took appellant to the emergency room after her April 15, 2016 shift ended, for complaints of left hip pain and squeaking. In a January 19, 2017 statement, a coworker asserted that, on the evening of April 15, 2016, appellant stated that “her left hip popped out and started making strange squeaking noises.”

In an April 16, 2016 emergency room report, Dr. Saket Sanghai, a Board-certified internist, and Dr. Nadine Youssef, Board-certified in emergency medicine, related appellant’s account of putting out mail at work when her left hip became stiff and started to squeak. Appellant noted that she underwent total left hip arthroplasty in 2013 with subsequent fracture of the polyethylene liner, necessitating a second left hip replacement in 2014. On examination there was an audible squeaking noise in the left hip when she walked, with tightness and stiffness in the joint.

An April 19, 2016 left hip x-ray showed “improper seating of the femoral prosthesis within the acetabular prosthesis.”

On May 6, 2016 Dr. Baratz performed a revision left total hip arthroplasty to address a failed acetabular liner and metallosis of left hip soft tissues. X-rays obtained that day demonstrated a well-seated replacement prosthesis. Follow-up reports dated June 7 and September 7, 2016 noted a normal alignment of the left hip prosthesis.

By decision dated April 4, 2017, an OWCP hearing representative affirmed the June 30, 2016 decision as modified to find that appellant had established that the April 15, 2016 incident occurred as alleged. She denied the claim, however, as the medical evidence of record was insufficient to establish that her left hip injury was causally related to the accepted April 15, 2016 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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

⁵ *Supra* note 3.

employment injury.⁶ 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.⁷

To determine whether an employee sustained a traumatic 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 that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁸ FECA characterizes damage to a prosthesis or prosthetic device as an injury.⁹ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.¹⁰

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is 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.¹¹

ANALYSIS

Appellant claimed that she sustained a fracture of the polyethylene acetabular liner of her left hip prosthesis when crouching to sweep mail on April 15, 2016. OWCP accepted that the crouching incident occurred as alleged, but denied the claim due to a lack of medical rationale supporting causal relationship.

Dr. Sanghai, a Board-certified internist, and Dr. Youssef, Board-certified in emergency medicine, noted in their April 16, 2016 report that appellant previously underwent a 2013 total left hip arthroplasty with 2014 acetabular liner fracture and revision, and that appellant experienced left hip pain with squeaking while loading mail at work on April 15, 2016. They diagnosed a dislocated internal left hip prosthesis. Dr. Baratz, an attending Board-certified orthopedic surgeon, performed a revision left total hip arthroplasty on May 6, 2016. However, none of appellant's physicians explained how and why crouching at work on April 15, 2016 would cause a fracture of the prosthetic acetabular liner. Causal relationship must be established

⁶ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ 5 U.S.C. § 8101(5); *N.L.*, Docket No. 15-1097 (issued August 11, 2016), *Gary C. Ashe*, Docket No. 94-0271 (issued July 13, 1995).

¹⁰ *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹¹ *Solomon Polen*, 51 ECAB 341 (2000).

by rationalized medical opinion evidence,¹² based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.¹³ In the absence of such rationale, the opinions of Dr. Sanghai, Dr. Youssef, and Dr. Baratz are insufficient to establish the claimed pathophysiologic causal relationship between the accepted April 15, 2016 work incident and the prosthesis fracture.

The Board has held that the mere fact that a disease or condition manifests itself or worsens during a period of employment¹⁴ or that work activities produce pain or discomfort revelatory of an underlying condition¹⁵ does not raise an inference of causal relationship between the condition and the employment factors.¹⁶ Therefore, Dr. Baratz' acknowledgement of the date of the accepted crouching incident, and Dr. Sanghai's and Dr. Youssef's repetition of appellant's account of events, are insufficient to establish causal relationship. None of appellant's physicians explained how the specific physical stresses of crouching to sweep mail would cause a fracture or dislocation of the polyethylene acetabular liner.

On appeal counsel contends that OWCP's hearing representative erred by ignoring the common sense of the situation, citing to the Board's holdings in *C.J.*,¹⁷ *Gregory J. Reser*,¹⁸ and *Ferne Frickey (Henry P. Frickey)*.¹⁹

C.J. and *Reser* both concern claims for externally caused injuries with distinctive clinical signs obvious to a medical practitioner. In *C.J.*, the Board set aside OWCP's denial of an electric shock injury based on a lack of medical rationale, as the medical evidence contained a clear, contemporaneous diagnosis of electrocution. In *Reser*, the Board reversed OWCP's denial of the claimant's poison oak rash, as the mechanism of causation was open and obvious. In the present case, however, appellant alleges an internal injury with no clear method of causation. No physician asserted that any objective element of appellant's presentation proved conclusively that crouching at work caused the prosthetic fracture.

The Board's holding in *Frickey* found that a heavy lifting incident caused a fatal cardiac event, based on rationale from the claimant's physicians explaining why these physical stresses

¹² *G.R.*, Docket No. 17-0669 (issued July 19, 2017); *N.L.*, Docket No. 17-0454 (issued April 6, 2017); *D.E.*, 58 ECAB 448 (2007); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Michael E. Smith*, *supra* note 7; *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹³ *T.H.*, Docket No. 17-0091 (issued July 25, 2017); *Patricia J. Bolleter*, 40 ECAB 373 (1988).

¹⁴ *C.C.*, Docket No. 17-0508 (issued September 13, 2017); *Michael E. Smith*, *supra* note 7; *William Nimitz, Jr.*, 30 ECAB 567 (1979).

¹⁵ *Michael E. Smith*, *supra* note 7; *Richard B. Cissel*, 32 ECAB 1910 (1981).

¹⁶ *E.H.*, Docket No. 17-0986 (issued August 10, 2017); *D.E.*, *supra* note 12; *Gary M. DeLeo*, 56 ECAB 656 (2005); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹⁷ Docket No. 06-2013 (issued January 25, 2007).

¹⁸ 57 ECAB 277 (2005).

¹⁹ 9 ECAB 308 (1957).

were competent to cause the episode in a man with a 30-year history of rheumatic heart disease. *Frickey* is distinguished from the present matter as the medical evidence of record contains no clear rationale explaining how and why the accepted crouching incident would have caused injury to appellant's left hip. Additionally, there is no discussion of what caused the 2013 hip injury, a critical omission considering the circumstances of the case.

Counsel also argues that OWCP's hearing representative improperly substituted her own medical judgment by ignoring inferences in the factual and medical evidence. In support of these propositions, he cites the Board's decisions in *George Ralston*²⁰ and *Jeannine E. Swanson*,²¹ in which the Board set aside an OWCP decision where an appointed physician relied on an incorrect legal standard, *Marcia A. McGuire*,²² where the Board remanded a case for full consideration of a chiropractor's reports as OWCP incorrectly found that he was not a physician under FECA, and *Diane J. Vaccaro*,²³ where the Board set aside an OWCP decision based on the claims examiner's reliance on a medical reference book not in the case record. The Board finds that none of these legal errors are present in this matter. There were no appointed physicians of record, OWCP did not cite to medical evidence extraneous to the case record, and OWCP did not find that any reports were not medical evidence. Counsel also referenced *Billy C. Rae*,²⁴ in which the Board set aside an OWCP decision where the claims examiner discounted a medical diagnosis as it was based on an irrelevant legal argument. However, there is no indication in this claim that OWCP improperly evaluated or considered the medical evidence of record, or that OWCP's hearing representative made any independent medical judgment.

Finally, counsel contends that OWCP's hearing representative committed legal error under OWCP's procedures²⁵ by ignoring precedent. Insofar as counsel's contention pertains to the Board decisions cited on appeal, as explained above, these cases are clearly distinguishable from the present claim.

By May 27, 2016 letter, OWCP notified appellant of the necessity of submitting medical rationale from her attending physician, explaining how and why work events would cause the claimed injury. As she did not submit such evidence, she did not meet 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.

²⁰ Docket No. 97-1939 (issued July 21, 1999).

²¹ 45 ECAB 325 (1994).

²² Docket No. 94-2383 (issued August 21, 1996).

²³ 47 ECAB 263 (1995).

²⁴ 43 ECAB 192 (1993).

²⁵ Specifically, Federal (FECA) Procedure Manual, Part 2 -- Claims, *General Provisions of the FECA*, Chapter 2.200.3 (July 2004).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a traumatic left hip injury, causally related to the accepted April 15, 2016 work incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 4, 2017 is affirmed.

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