United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 17-1532**
	)	**Issued: January 23, 2018**
DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, Norfolk, VA, Employer	)	

Appearances:
Appellant, pro se
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 5, 2017 appellant filed a timely appeal from a March 30, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 right hip condition as a consequence to his accepted December 11, 1996 employment injury.

FACTUAL HISTORY

On December 12, 1996 appellant, then a 43-year-old packer, filed a traumatic injury claim (Form CA-1) alleging that he sustained a strain on December 11, 1996 as a result of "lifting, bending, stooping, and pulling" in the performance of duty. OWCP accepted the claim

[1] 5 U.S.C. § 8101 *et seq.*

for lumbar radiculopathy and aggravation of preexisting lumbosacral strain. By decision dated January 21, 2003, it issued a schedule award for 18 percent permanent impairment of the left lower extremity and 10 percent permanent impairment of the right lower extremity. By decision dated September 29, 2009, OWCP issued a schedule award for an additional three percent permanent impairment of the right lower extremity.

On June 13, 2014 appellant filed an occupational disease claim (Form CA-2) alleging that he developed arthritis of the right hip, right groin, and neck due to factors of his federal employment. He identified December 11, 1996 as the date that he first realized his conditions were caused or aggravated by his employment.

In a letter dated December 19, 2014, OWCP advised appellant that it had received notification of a possible consequential condition of right hip and groin arthritis in connection with his accepted December 11, 1996 employment injury. It requested additional evidence and afforded appellant 30 days to respond to its inquiries.

In response, appellant submitted two January 5, 2015 narrative statements detailing his work history and the factual history of his claim.

A magnetic resonance imaging (MRI) scan of the lumbar spine dated September 18, 2014 revealed moderate central canal stenosis at L4-5, mild central canal stenosis at L2-3, L3-4, and L5-S1, and multilevel degenerative changes.

In a January 5, 2015 report, Dr. Felix M. Kirven, a Board-certified orthopedic surgeon, indicated that appellant sustained a work-related injury on December 11, 1996. He noted that appellant had an accepted claim for lumbar strain and thoracic strain with lumbar radiculopathy. Dr. Kirven opined that appellant also sustained a right hip injury on December 11, 1996. He indicated that on the date-of-injury appellant was reaching up on a conveyor belt to remove a box that was very high, the weight of the box was misjudged, and when he grabbed the box, he placed it on a pallet twisting his back and right hip. Since that time appellant had chronic pain in the right hip and groin, in addition to lower back pain. Dr. Kirven indicated that x-rays dated January 15, 2015 showed collapse of the joint space of the right hip and a large osteophyte over the anterior lateral aspect of the right hip. He opined that appellant sustained a strain/labral injury to the right hip as exemplified by the calcification on the anterolateral aspect of the right hip radiograph. Dr. Kirven further indicated that over time appellant developed secondary degenerative changes as a result of his December 11, 1996 work injury. He further indicated that the labral tear was not diagnosed on his initial workup. Dr. Kirven concluded that appellant sustained a right hip labral injury on December 11, 1996, which resulted in a calcified bony fragment over the anterolateral hip and appellant developed progressive degenerative arthritis as a result of the initial work injury.

On October 2, 2015 Dr. Kirven diagnosed primary osteoarthritis of the pelvis and reiterated his opinion that appellant sustained a right hip injury on December 11, 1996 and his labral tear with ligamentous tearing subsequently developed into primary osteoarthritis of the pelvis (degenerative joint disease). He noted that appellant had no preexisting injuries to the right hip.

By decision dated October 28, 2015, OWCP denied authorization for the additional condition of degenerative osteoarthritis of the right hip because the evidence of record failed to establish causal relationship between this condition and the December 11, 1996 employment incident.

On November 24, 2015 appellant requested an oral hearing by a representative of the Branch of Hearings and Review.

Appellant submitted a report dated December 16, 1996 from Dr. Joel Andrew Mason, a Board-certified orthopedic surgeon, who indicated that appellant was in his usual state of health until December 11, 1996 at which time he was at work and was in the process of pulling boxes off an assembly line. Dr. Mason noted that appellant turned to walk from his workstation when he felt severe pain in his right hip and his right leg gave way. Appellant had difficulty standing or walking following this incident. Dr. Mason reported that appellant was seen at Sewell's Point Clinic because of the pain "primarily in his right hip" and was "unable to return to work because of the pain in his right hip." He reported that appellant had persistent pain in his right lower back, as well as pain radiating into his right hip and buttock area, his right groin, and the anterior right thigh. Dr. Mason noted that appellant had no previous problems with his right hip, but he did have a work-related injury to his back in 1988 when he sustained a twisting injury to his lower back while getting into a forklift. Appellant was treated conservatively with rest, heat, and medication, his symptoms subsided over approximately one week, and he then returned to his full duties. Upon physical examination, Dr. Mason found pain and voluntary guarding on the extremes of motion of the right hip, but no localized tenderness about the right hip. There was no calf swelling or tenderness. The Homan's sign was negative. X-rays of the pelvis, including the right hip, revealed no gross fractures or dislocations, but were poor technically as a portion of the greater trochanter was not seen on one x-ray and on the other x-ray was covered by the label. For that reason, additional x-rays were taken of the right hip in a long anteroposterior and long lateral projection, and it revealed no fractures or dislocations. The joint space was well preserved and the normal spherical shape of the femoral head was well maintained. The sacroiliac joints were well preserved and there were no obvious fractures about the pelvis or hip area. X-rays of the lumbosacral spine demonstrated moderate preexisting degenerative joint disease. Dr. Mason diagnosed acute dorsal and lumbosacral strain superimposed upon preexisting degenerative joint disease of the lumbosacral spine. He noted that "[i]t was also felt that [appellant] had a contusion [and] muscle and ligament strain of the right hip."

On January 9, 1997 Dr. Mason continued to diagnose contusion and muscle and ligament strain of the right hip. He also diagnosed tendinitis at the point of attachment of the back muscles to the posterosuperior iliac spine on the right and synovitis of the right sacroiliac joint.

In reports dated January 23 and February 10, 1997, Dr. Mason reiterated his diagnoses and opinions.

On November 21, 1997 and February 3, 1998 Dr. Mason found that appellant's hip flexion, extension, abduction, and adduction were five out of five.

In a March 11, 1998 report, Dr. Mason noted that appellant was involved in a motor vehicle accident in October 1996 and February 1997 and he was treated by a chiropractor on

both occasions with heat, ultrasound, electrical stimulation, and adjustments to his back and right leg. He noted that appellant was under the care of his chiropractor through the middle of January 1997 and his work-related injury occurred on December 11, 1996. Dr. Mason reported that appellant neglected to mention either of these two accidents to him at the time of his original visit.

In an April 10, 2002 report Dr. Richard T. Holden, a Board-certified orthopedic surgeon, noted that on December 11, 1996 appellant was working on an assembly line and while he was picking up a box, he twisted and then started to put it down. Appellant instantly developed a very sharp pain in his right buttock, right lateral hip, and anterior lateral hip. After two or three steps later, his right leg gave out on him. Appellant had similar complaints ever since his incident, but at a lower intensity. Dr. Holden reported that appellant's medical history included a low back strain in 1985 while getting up on a forklift, an automobile accident in 1995, and another automobile accident in 1996 resulting in mild low back, upper back, and neck pain.

A lumber spine MRI scan dated April 26, 2002 demonstrated degenerative disc disease, disc bulges at L3-4 and L4-5, degenerative facet change of the lower lumbar spine, and mild retrolisthesis of L5 on S1.

On September 12, 2002 Dr. Holden noted that electromyography studies showed a chronic right L5 nerve root radiculopathy and an x-ray showed degenerative arthritis of the hip. He indicated that the automobile accidents of February and October 1996 were not related to appellant's lower back history as they were cervical spine injuries.

In reports dated July 29 and October 30, 2014, Dr. Kirven reiterated his diagnoses and opinions. He also reported that appellant injured his neck and right shoulder on June 18, 2004 when he was opening a tailgate to a truck for which the pin was bent.

A telephonic hearing was held before an OWCP hearing representative on March 15, 2016. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

Appellant resubmitted an October 30, 2014 report from Dr. Kirven in support of his claim.

By decision dated May 26, 2016, OWCP's hearing representative affirmed the prior decision.

On March 13, 2017 appellant requested reconsideration and submitted a November 9, 2016 report from Dr. Kirven who found that radiographs of the hip dated July 29, 2014 showed end-stage arthritis of the hip with collapse of the cartilage space. His lower extremity motor examination demonstrated that hip flexion, extension, adduction, and abduction was five out of five. Dr. Kirven noted that appellant's right hip labral tear went undiagnosed despite a hip arthrogram and radiographic studies. He continued to opine that appellant developed secondary degenerative arthritis as a result of his undiagnosed labral tear in the hip.

By decision dated March 30, 2017, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which attributable to the employee's own intentional conduct.[2] In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, then a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[3]

The Board has held that if a member weakened by an employment injury contributes to a later injury, the subsequent injury will be compensable as a consequential injury, if the further medical complication flows from the compensable injury so long as it is clear that the real operative factor is the progression of the compensable injury.[4]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[5] 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 identified by the employee.[6]

ANALYSIS

OWCP accepted appellant's claim for lumbar radiculopathy and aggravation of preexisting lumbosacral strain. However, it declined to expand the claim to include right hip degenerative osteoarthritis. The Board finds that appellant has not met his burden of proof to establish that his right hip condition was causally related to the accepted December 11, 1996 employment injury.

Dr. Mason diagnosed right hip contusion and strain. He also diagnosed tendinitis at the point of attachment of the back muscles to the posterosuperior iliac spine on the right and synovitis of the right sacroiliac joint. Dr. Mason indicated that appellant was involved in a motor vehicle accident in October 1996 and February 1997, noting that appellant was under the care of his chiropractor through the middle of January 1997 and his work-related injury occurred on December 11, 1996. He noted that appellant neglected to mention either of these two accidents to him at the time of his original visit and he did not opine as to the course of the condition. The

[2] *Albert F. Ranieri*, 55 ECAB 598, 602 (2004); A Larson, *The Law of Workers' Compensation* § 10.01 (2000).

[3] *Charles W. Downey*, 54 ECAB 421, 422-23 (2003).

[4] *S.M.*, 58 ECAB 166 (2006); *Raymond A, Nester*, 50 ECAB 173, 175 (1998).

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

[6] *I.J.*, 59 ECAB 408 (2008); *Ruthie M. Evans*, 41 ECAB 416 (1990).

Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[7] Consequently, the reports from Dr. Mason are insufficient to satisfy appellant's burden of proof with respect to causal relationship.[8]

In his reports, Dr. Holden indicated that on December 11, 1996 appellant was working on an assembly line and while he was lifting a box, he twisted, and then started to put it down. Appellant instantly developed a very sharp pain in his right buttocks, right lateral hip, and anterior lateral hip. Dr. Holden noted that an x-ray showed degenerative arthritis of the hip. He reported that appellant's medical history included a low back strain in 1985 while getting up on a forklift, an automobile accident in 1995, and another automobile accident in 1996 resulting in mild low back, upper back, and neck pain. Dr. Holden indicated, however, that the automobile accidents of February and October 1996 were not related to appellant's lower back history as they were cervical spine injuries. He failed to provide sufficient medical rationale explaining how the December 11, 1996 employment incident caused or aggravated his right hip condition. Thus, the Board finds that the reports from Dr. Holden are insufficient to establish a consequential injury.

In his reports in 2016, Dr. Kirven diagnosed primary osteoarthritis of the pelvis. He opined that appellant sustained a right hip injury on December 11, 1996 and his labral tear with ligamentous tearing subsequently developed into primary osteoarthritis of the pelvis. Dr. Kirven indicated that on the date-of-injury appellant was reaching up on a conveyor belt to remove a box that was very high, the weight of the box was misjudged, and when he grabbed the box, he placed it on a pallet twisting his back and right hip. He indicated that radiographs of the hip dated July 29, 2014 showed end-stage arthritis of the hip with collapse of the cartilage space, and x-rays dated January 15, 2015 showed collapse of the joint space of the right hip and a large osteophyte over the anterior lateral aspect of the right hip. Dr. Kirven opined that appellant sustained a strain/labral injury to the right hip as exemplified by the calcification on the anterolateral aspect of the right hip radiograph. He opined that appellant's labral tear was not diagnosed on his initial work-up despite a hip arthrogram and radiographic studies. Dr. Kirven concluded that appellant sustained a right hip labral injury on December 11, 1996, which resulted in a calcified bony fragment over the anterolateral hip, and appellant developed progressive degenerative arthritis as a result of the initial work injury. He noted that appellant's condition occurred while he was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed condition.[9] The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish causal relationship between appellant's condition and his accepted employment injury.[10] The need for rationale is particularly important as the record indicates that appellant

[7] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[8] *Id.*

[9] *See K.W.*, Docket No. 10-0098 (issued September 10, 2010).

[10] *See Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *P.B.*, Docket No. 14-0837 (issued August 12, 2014).

had a history of twisting injuries in 1985 and 1988 while getting into a forklift, and motor vehicle accidents in 1995, 1996, and 1997. For these reasons, the Board finds that the reports from Dr. Kirven are insufficient to establish that appellant's right hip condition was caused or aggravated by factors of his federal employment.

As appellant has not submitted any rationalized medical evidence to support that his right hip condition was causally related to the accepted December 11, 1996 employment injury, OWCP properly declined to expand the claim to include right hip degenerative osteoarthritis as an accepted condition.

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 a right hip condition as a consequence to his accepted December 11, 1996 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2018
Washington, DC

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

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

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