

hip when carrying mail, and that the pain, which was sometimes a sharp stabbing pain and sometimes a dull pain, came and went while he walked. Appellant indicated that he first became aware of his claimed condition and its relation to his federal employment on July 13, 2015. He advised that he had been favoring/protecting his right ankle due to a previous work injury and indicated that this circumstance forced him to overuse his left hip.²

In a narrative statement dated March 1, 2016, appellant described the work duties which he felt adversely affected his left hip. He noted that, when he was fully able, he worked 40 to 50 hours a week. Appellant indicated that he engaged in standing, sorting mail, twisting/turning, transferring weight to his hips, legs, and back, pushing large hampers of parcels out to trucks, pushing utility carts full of mail (many of which rolled poorly) out to his postal vehicle, reaching into the back of his vehicle to load mail, entering and exiting his vehicle, sitting in his vehicle for extended periods, and carrying a satchel full of mail while walking with the weight hanging on his left shoulder. He asserted that he had no previous problems involving his left hip.

In a January 11, 2016 report, Dr. Alice Woon-Ling, an attending Board-certified family practitioner, noted that January 11, 2016 x-ray testing of appellant's hips showed some arthritis and calcification of soft tissue near the left hip joint, but looked the same as his x-ray testing from 2012.³ Dr. Woon-Ling indicated that these were common age-related changes and indicated that his symptoms would improve after the foot/ankle cast from his December 2015 right ankle surgery came off and he started physical therapy.

In a January 20, 2016 report, Dr. Tracey A. Jones, an attending Board-certified physical medicine and rehabilitation physician, noted that appellant's December 2015 right ankle surgery had altered his gait patterns, thereby increasing his left hip pain.

By letter dated April 11, 2016, OWCP requested that appellant submit additional evidence in support of his claim.

In an April 19, 2016 report, Dr. Shawn J. Hsieh, an attending Board-certified physical medicine and rehabilitation physician, noted that appellant reported that his left hip began hurting in July 2015 while he was carrying mail and that he had walked in a crooked manner since January 2015. Appellant reported that his right ankle condition had forced him to push off the left hip and that, since undergoing right ankle surgery in December 2015, his left hip had worsened to the point where he could not walk on it at times. Dr. Hsieh noted that appellant had two hip injections since January 2016 and that he was working on weight loss and smoking cessation. He noted that appellant had requested total left hip replacement. Dr. Hsieh indicated that the cause of appellant's left hip condition was uncertain, but he also noted that the nonindustrial causative factors for the condition included his age and being overweight. He noted that the industrial factors included working a job that required him to be on his feet

² Appellant's occupational disease claim for the previous work injury, assigned OWCP File No. xxxxxx523, was accepted for aggravation of right ankle osteoarthritis. That case is not currently before the Board. The case record for the present claim, OWCP File No. xxxxxx484, references a December 2015 right ankle surgery in connection with his prior claim, but the record does not contain any medical report of that surgery.

³ The record contains a copy of the January 11, 2016 x-ray testing of appellant's hips.

carrying a satchel for 30 years. Dr. Hsieh estimated that 70 percent of appellant's left hip osteoarthritis was work related and that 30 percent was related to age and being overweight. He placed appellant on modified work.

In an April 28, 2016 report, Dr. Robert J. Nied, an attending Board-certified family practitioner, noted that appellant complained of left upper thigh and hip pain and could hardly walk. He noted that appellant's symptoms were consistent with moderate osteoarthritis in his left hip, and exacerbated by the altered gait from his right ankle.

In a June 7, 2016 report, Dr. Francesca Manfredi, an attending Board-certified family practitioner and osteopath, noted that appellant reported significant increase in left hip pain without any recent injury or fall and that he could not turn over in bed.

In a June 13, 2016 report, Dr. Robert Koch, an attending Board-certified orthopedic surgeon, indicated that appellant reported that his left hip pain significantly worsened in the past few weeks and that he now had to use crutches. He noted that x-rays showed a marked and severe progression from mild to now severe degenerative changes involving the left hip, with deformity of the head of the left femur. In the assessment part of his report, Dr. Koch indicated that appellant had severe left hip osteoarthritis secondary to avascular necrosis collapse.

On June 23, 2016 Dr. Ken Fujii, an attending Board-certified orthopedic surgeon, performed a total left hip arthroplasty.

In a June 27, 2016 decision, OWCP denied appellant's occupational disease claim because he failed to submit sufficient medical evidence to establish a causal relationship between the claimed left hip condition and employment factors. It noted that Dr. Hsieh made no mention of the right ankle condition causing or contributing to left hip condition and had not provided a rationalized medical opinion explaining how the work duties caused or aggravated the diagnosed left hip condition.

Appellant disagreed with OWCP's June 27, 2016 decision and requested a hearing with a representative of OWCP's Branch of Hearings and Review.

Prior to the hearing, appellant submitted a July 14, 2016 report in which Dr. Hsieh noted that he would like to make an addition to his prior comments on causation. Dr. Hsieh estimated that 70 percent of appellant's left hip arthritis was caused by work-related factors because he had performed his job for 30 years and it required him to be on his feet standing and walking for very large portions of the day. He noted that appellant's left hip arthritis was the result of years of repetitive wear and tear on the cartilage of the hip joint. Dr. Hsieh indicated that prolonged standing and walking over 30 years could cause wearing down of the cartilage.

Appellant also submitted an October 24, 2016 report in which Dr. Jones indicated that he suffered from severe right ankle arthritis which was being treated under a workers' compensation claim due to the repetitive trauma of walking and stepping up and down when entering and exiting his postal vehicle over a 30-year period. Dr. Jones noted that appellant also developed severe arthritis in his left hip. She noted that similar repetitive activities can cause the hip joint to develop arthritis in the same manner as the ankle joint. Dr. Jones posited that the added pressure to the left hip joint that occurred while appellant was recovering from right ankle

surgery increased the severity of his left hip to the point that femoral head collapsed and required replacement. She noted, "Causation of [appellant's] left hip arthritis with progression to [avascular necrosis] related to 30 years of walking many miles a day and stepping up/down into delivery vehicle."

During the hearing held on January 4, 2017, appellant testified that he had been a letter carrier for 31 years, a job which typically required walking six to seven miles per day. He indicated that over the years there had been a tremendous increase in parcel mail, which required him to climb in and out of the back of his postal vehicle to deliver packages. Appellant testified that his left hip really started bothering him in July 2015, but that he continued carrying mail up until his right ankle surgery in December 2015. He objected to Dr. Hsieh indicating in his April 19, 2016 report that appellant's weight contributed to his left hip condition noting that he weighed 188 pounds in June 2016. Appellant advised that he had not worked since his December 2015 right ankle surgery.

After the hearing, appellant submitted a January 18, 2017 report from Dr. Fulton S. Chen, an attending physician Board-certified in physical medicine and rehabilitation, who indicated that appellant reported that he had never experienced left hip pain prior to July 2015. Dr. Chen noted that appellant's January 11, 2016 left hip x-ray testing showed mild degenerative changes which were not noted in his June 3, 2012 x-ray testing. He opined that appellant's left hip osteoarthritis was a consequence of his altered gait in relation to his right ankle condition. Dr. Chen noted that appellant's right ankle injury resulted in abnormal joint loading over his left hip and the resulting biomechanical load resulted in microtrauma to his hip joint. Appellant's right ankle injury caused him to favor his right ankle and shift his body weight over the left leg when walking, resulting in an antalgic limp. Dr. Chen noted that joint force in the lower extremities is directly proportional to body weight, so by shifting his weight to his left leg when walking, appellant increased the biomechanical force on his left hip joint. The abnormal amount of weight resulted in an increased biomechanical load over his left hip joint causing microtrauma to the articular cartilage of the joint, which eventually progressed to his severe hip osteoarthritis.

In a February 15, 2017 decision, OWCP's hearing representative affirmed OWCP's June 27, 2016 decision. The hearing representative noted that Dr. Nied and Dr. Chen opined that appellant's right ankle injury altered his gait and thereby caused or exacerbated the hip condition. She advised that, "If the claimant is asserting that the left hip condition is a consequential injury due to his ankle injury, then the claimant should pursue this as a consequential injury under [OWCP File No. xxxxxx523]." However, the hearing representative further noted that, "Consideration was given to whether the evidence of file was sufficient to accept the claim for a consequential injury under [OWCP File No. xxxxxx523]." She then indicated that the January 11, 2016 report of Dr. Woon-Ling contained an opinion that appellant's degenerative left hip changes were normal age-related changes and concluded that the medical evidence of record was insufficient to establish that the left hip condition was suffered as consequence of his right ankle condition.

The hearing representative then discussed the July 14, 2016 report of Dr. Hsieh, noting that, in contrast to Drs. Jones, Nied, and Chen, Dr. Hsieh did not opine that appellant had sustained a consequential injury. She determined that neither Dr. Hsieh nor Dr. Chen had explained how the January 11, 2016 left hip x-ray supported that appellant's work duties altered

the natural progression of the underlying disease. The hearing representative also discussed the June 13, 2016 report of Dr. Koch and indicated that it did not show that appellant's left hip avascular necrosis was work related. She noted that, because appellant did not return to work after his December 2015 ankle surgery, there were no work duties between December 2015 and June 2016 which could have contributed to the worsening of his left hip condition. The hearing representative concluded, "For these reasons, I find that the medical evidence on file is insufficient to establish that the claimant's left hip condition is causally related to his work duties. If the claimant wishes to pursue his claim as a consequential injury arising from his ankle condition he may do so under [OWCP File No. xxxxxx523] by providing the medical evidence described above."

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 the 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 employment injury.⁵ To establish fact of injury, an employee must submit evidence sufficient to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged.⁶ An employee must also establish that such event, incident, or exposure caused an injury.⁷ 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.⁸

OWCP regulations define the term "[o]ccupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift.⁹ To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.¹⁰

⁴ *Supra* note 1.

⁵ 5 U.S.C. § 8101(1); *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

⁷ *Id.*

⁸ *R.H.*, 59 ECAB 382 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁹ 20 C.F.R. § 10.5(q); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.2b (June 2011).

¹⁰ *D.H.*, Docket No. 15-1876 (issued January 29, 2016); *D.I.*, 59 ECAB 158 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.¹¹ 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 established employment factors.¹²

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to claimant's own intentional misconduct.¹³ Thus, a subsequent injury, be it 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.¹⁴ A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence.¹⁵

ANALYSIS

On March 29, 2016 appellant filed an occupational disease claim alleging that he sustained a left hip injury due to performing his work duties over a period of time. In a June 27, 2016 decision, OWCP denied his occupational disease claim because he failed to submit sufficient medical evidence to establish a causal relationship between the claimed left hip condition and employment factors. In a February 15, 2017 decision, the hearing representative affirmed OWCP's June 27, 2016 decision.

In the analysis section of her February 15, 2017 decision, OWCP's hearing representative initially noted that Dr. Nied and Dr. Chen opined that appellant's right ankle injury altered his gait and thereby caused or exacerbated the hip condition. The hearing representative advised that, "If the claimant is asserting that the left hip condition is a consequential injury due to his ankle injury, then the claimant should pursue this as a consequential injury under [OWCP File No. xxxxxx523]." However, she then noted that, "Consideration was given to whether the evidence of file was sufficient to accept the claim for a consequential injury under [OWCP File No. xxxxxx523]." The hearing representative then noted that the January 11, 2016 report of Dr. Woon-Ling contained an opinion that appellant's degenerative left hip changes were normal age-related changes, and concluded that the medical evidence of record was insufficient to establish that his left hip condition was suffered as consequence of his right ankle condition. She then discussed other medical evidence of record, without reference to the portion of any report providing an opinion on the consequential injury matter, and concluded that appellant had not established an occupational injury due to his work duties. Finally, the hearing representative

¹¹ *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

¹² *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

¹³ *Mary Poller*, 55 ECAB 483, 487 (2004); 1 Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* 10-1 (2006).

¹⁴ *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

¹⁵ *Charles W. Downey*, 54 ECAB 421 (2003).

noted that, “If the claimant wishes to pursue his claim as a consequential injury arising from his ankle condition he may do so under [OWCP File No. xxxxxx523] by providing the medical evidence described above.”

The Board finds that the case must be remanded to OWCP for further development because the February 15, 2017 decision of OWCP’s hearing representative does not contain adequate facts and findings explaining the denial of appellant’s claim.

In deciding matters pertaining to a given claimant’s entitlement to compensation benefits, OWCP is required by statute and regulation to make findings of fact.¹⁶ Its procedures further specify that a final decision of OWCP “should be clear and detailed so that the reader understands the reason for the disallowance of the benefit and the evidence necessary to overcome the defect of the claim.”¹⁷ These requirements are supported by Board precedent.¹⁸

The Board notes that there are essentially two aspects of appellant’s occupational disease claim. Appellant claimed that his work duties adversely affected his left hip condition. However, he also claimed that he sustained a consequential injury to his left hip because he favored his right ankle, for which a work-related injury with associated December 2015 surgery had been developed under OWCP File No. xxxxxx523. The Board notes that, due to conflicting statements, the February 15, 2017 decision of OWCP’s hearing representative fails to make clear whether a finding was made regarding his consequential injury claim or whether he was expected to pursue the claim under OWCP File No. xxxxxx523. Even if it were determined that a finding was made regarding appellant’s consequential injury claim, such a determination would not allow him to understand the defects of his claim and how to rectify them.¹⁹ Appellant submitted several reports of Drs. Jones, Nied, and Chen which contained opinions that he suffered a consequential injury to his left hip because he favored his right ankle. The January 18, 2017 report of Dr. Chen, in particular, contains an extensive discussion of this matter. However, the February 15, 2017 decision of OWCP’s hearing representative did not discuss the portion of any report of record providing an opinion on the consequential injury matter.

For these reasons, the case must be remanded to OWCP for further development including the issuance of a *de novo* decision regarding appellant’s claim for a work-related occupational condition which contains adequate facts and findings. OWCP should combine the present file, OWCP File No. xxxxxx484, with the file concerning his previous claim for his right ankle condition, OWCP File No. xxxxxx523, to ensure that all relevant evidence is reviewed that is necessary to render an informed decision with respect to his claim.²⁰

¹⁶ 5 U.S.C. § 8124(a) provides that OWCP “shall determine and make a finding of facts and make an award for or against payment of compensation.” 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP “shall contain findings of fact and a statement of reasons.”

¹⁷ See *supra* note 9 at Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5c(3)(e) (February 2013).

¹⁸ See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

¹⁹ See *supra* note 17.

²⁰ See *supra* note 9 at Chapter 2.800.5a (June 2011) (concerning the need for all evidence that forms the basis of a decision to be in that claimant’s case record).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 15, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: January 16, 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