

ISSUE

The issue is whether appellant has met his burden of proof to establish an occupational disease causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On January 20, 2012 appellant, then a 50-year-old retired letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a permanent aggravation of his left hip osteoarthritis as a result of his 31 years of working for the employing establishment.⁴ He identified the physical activities of walking, negotiating stairs and uneven terrain, turning, bending, reaching, reaching above shoulder level, and stooping while performing the duties of a letter carrier as having permanently aggravated his left hip arthritis. On his claim form appellant indicated that he first became aware of his condition and that it was caused or aggravated by his federal employment on January 3, 2012.

In a December 2, 2011 statement, appellant reported first having problems with his left hip in September 2008, when he noted difficulty climbing and getting in and out of his delivery truck. On November 3, 2008 he saw Dr. Timothy E. Reese, a Board-certified internist, who diagnosed a groin pull.

In a July 25, 2011 report, Dr. Reese indicated that appellant had a history of left groin pain dating back years, which worsened now that he was more active playing golf. Due to the chronicity of appellant's left groin pain, x-rays of the left groin/hip region were first performed on July 26, 2011 and showed evidence of mild-to-moderate left hip osteoarthritis.

In an August 4, 2011 report, Dr. Ayesha Abdeen, a Board-certified orthopedic surgeon, noted that appellant was a retired letter carrier and that there was a history of left hip pain for several years without any antecedent trauma. Appellant experienced pain particularly when playing golf and walking long distances carrying his golf paraphernalia. Dr. Abdeen opined that appellant's left groin pain was likely related to moderate-to-severe osteoarthritis as seen radiographically. There was also a remote possibility that the left groin pain was referred from the lumbar spine, given the severe degenerative joint disease on x-ray and appellant's past history of lumbar spine pain and prior nerve root compression. On October 18, 2011 Dr. Abdeen performed a left hip arthroplasty.

On January 3, 2012 Dr. Byron V. Hartunian, a Board-certified orthopedic surgeon, noted that appellant recently retired from the employing establishment. He reported that appellant noticed discomfort in his left groin in 2004 and had continued working with increased pain and discomfort about the left hip, particularly with climbing and squatting activities. Dr. Hartunian reviewed documentation and appellant's signed statement which described his duties as a letter carrier. He opined that appellant's employment factors of repetitive heavy physical activities resulted in increased stressors through his hip which contributed to his arthritic condition prearthroplasty and which had left him in his current condition regarding his hip. Dr. Hartunian

⁴ Appellant retired from the employing establishment on January 30, 2009.

noted that appellant's letter carrier work permanently aggravated and accelerated his left hip osteoarthritis.

By development letter dated February 3, 2012, OWCP advised appellant of the deficiencies in his claim and requested additional factual and medical evidence. This included clarification regarding any hobbies, activities, or sports in which appellant engaged up to and following his retirement. Medical reports which established a causal relationship between the claimed condition and factors of his federal employment were also requested. Appellant was afforded 30 days to submit the requested evidence.

In a February 21, 2012 report, Dr. Hartunian opined that appellant's daily work duties, which he described in terms of climbing, walking, and carrying, had permanently accelerated the progression of his underlying arthritis, regardless and irrespective of any aggravation of his condition by golf.

By decision dated April 20, 2012, OWCP denied the claim. It found that the medical evidence submitted was insufficient to establish that the medical condition was causally related to the accepted work factors. Specifically, OWCP found that there was no medical evidence to support that appellant was treated for any hip condition prior to his retirement from the employing establishment on January 30, 2009.

On April 23, 2012 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. The hearing was held on September 24, 2012. By decision dated January 8, 2013, an OWCP hearing representative set aside the April 20, 2012 decision and remanded the case for further medical development to include referral for a second opinion evaluation.

On January 31, 2013 Dr. Stanley Hom, a Board-certified orthopedic surgeon, performed a second opinion evaluation of appellant. In a February 5, 2013 report, he reviewed the January 15, 2013 statement of accepted facts (SOAF), a list of questions, and the medical record and set forth examination findings. Dr. Hom noted OWCP's definitions of causal relationship and concluded that appellant's work activities intermittently aggravated the underlying degenerative condition on a temporary basis. He opined that the progression of appellant's arthritis was consistent with the natural history of the disease which ultimately progressed to the point of requiring medical treatment. Dr. Hom reasoned that the development of osteoarthritis was dependent upon a complex interaction between a generalized systemic and genetic diathesis and mechanical factors (such as impact loading) that were cumulative over a lifetime. He opined that appellant's work activities of a letter carrier may have served to intermittently, temporarily aggravate his left hip condition manifested by increased symptoms. Dr. Hom noted that by history appellant was never disabled from a work standpoint nor did his symptoms require him to seek formal medical attention related to those instances other than the initial evaluation attributed to a "groin pull."

In a January 29, 2013 report, Dr. Hartunian reiterated his opinion that appellant's degenerative process was accelerated by his letter carrier duties regardless and irrespective of any aggravation of his condition by golf. He indicated that appellant's arthritic symptoms in his left hip first appeared in 2008, which confirmed that he had already suffered a significant deterioration of the articular cartilage of his left hip. Dr. Hartunian concluded that by 2008 appellant's performance of the rigorous physical duties of a letter carrier had hastened, accelerated, and

exacerbated that deterioration and had already significantly contributed to the progression of the arthritic process which had continued to worsen to the point an arthroplasty was required.

On April 4, 2013 OWCP declared a conflict in medical opinion between Dr. Hom and Dr. Hartunian as to whether appellant's left hip condition was related to his work activities. Appellant was referred to Dr. Charles G. Brennan, a Board-certified orthopedic surgeon, for an impartial medical evaluation. OWCP provided Dr. Brennan with a January 15, 2013 SOAF and a February 20, 2013 set of questions, which included a request that he discuss whether appellant's work factors caused or contributed to his left hip condition.

In an April 22, 2013 report, Dr. Brennan opined that he did not believe that there was any scientific evidence that would support the fact that the working conditions of a letter carrier would aggravate or exacerbate a degenerative process on a permanent basis. Although appellant's underlying degenerative process may have been exacerbated by his work-related activity, Dr. Brennan explained that it could not be found with any degree of certainty that the underlying degenerative condition was exacerbated. He indicated that there was some medical evidence that increased activity could be prophylactic in preventing hip replacement. Dr. Brennan concluded that appellant's need for a hip replacement and his long-term disability was not directly related to his work-related activity as there was no permanent aggravation of his degenerative process.

By decision dated May 10, 2013, OWCP denied appellant's claim. It found the special weight of the medical opinion evidence rested with its impartial medical specialist, Dr. Brennan, who opined that appellant's work activity did not permanently aggravate appellant's degenerative process.

On May 12, 2014 appellant requested reconsideration. In an April 28, 2014 report, Dr. Hartunian noted the question he was asked was whether or not appellant's job activities contributed to his medical condition without regard to the extent of that contribution. He indicated that the reports of Drs. Hom and Brennan implied that appellant's job activities had contributed to his condition, but that it was not a major or predominant contributor. Dr. Hartunian indicated that research studies found that early onset osteoarthritis was seen more often in heavy labor occupations and where mechanical stressors on the joint were excessive. Thus, he opined that his research contradicted Dr. Brennan's opinion.

By decision dated July 11, 2014, OWCP denied modification of its prior decision. It found that, while Dr. Hartunian noted that there was some evidence in the medical literature to support causal relationship, medical texts and excerpts from publications were of no evidentiary value in establishing causal relationship. Further, Dr. Hartunian's opinion on causal relationship was not well-rationalized as he did not fully address how appellant's employment activities affected the development of osteoarthritis or explain how appellant's mild-to-moderate left hip osteoarthritis was something more than a natural, common, or coincidental development.

On July 10, 2015 appellant, through counsel, requested reconsideration of OWCP's July 11, 2014 decision. In a July 10, 2015 memorandum, counsel presented legal arguments pertaining to OWCP's misrepresentation of the law as well as the legal standard of causal relationship.

In a July 3, 2015 report, Dr. Hartunian indicated that current medical research showed that osteoarthritis was not a disease that had a natural progression or ordinary course. He noted that those findings were consistent with the hypothesis that specific ergonomic stresses such as knee bending, kneeling, and squatting may constitute long-term stresses leading to osteoarthritis. Dr. Hartunian concluded that appellant's job duties included heavy labor, heavy loading activities, and repeated local stresses, which he identified as repeated knee bending, kneeling, lifting, climbing, stooping, twisting, squatting, and carrying, all of which were cited in the research as causative contributing factors to the development and progression of lower extremity arthritis.

By decision dated August 17, 2015, OWCP denied modification of its prior decision. It found counsel's arguments failed to demonstrate that OWCP had erroneously applied or interpreted a specific point of law. OWCP also found that Dr. Hartunian's opinion expressed in his July 3, 2015 report was insufficient to overcome the special weight of the impartial medical specialist or to create a new conflict.

On July 29, 2016 appellant, through counsel requested, reconsideration. In a July 26, 2016 memorandum, counsel argued that OWCP either erred or misapplied the law in according weight of the medical evidence to the opinion of Dr. Brennan, the impartial medical specialist. Citing to the Board's decision in *Stanczak*,⁵ FECA Procedure Manual, and several unrelated case files, counsel argued that it was error for OWCP to rely on Dr. Brennan's opinion as it was not sufficiently rationalized and Dr. Brennan incorrectly applied and/or ignored the applicable causal relation standard to the question of permanent or temporary aggravation. Furthermore, the new evidence in appellant's expanded statement and Dr. Hartunian's additional opinion supported that the cumulative nature of appellant's repetitive duties were a factor in the progression of his arthritis.

In a July 10, 2016 report, Dr. Hartunian indicated that he reviewed an expanded statement from appellant which stated that, conservatively, during his duties as a letter carrier over several decades he spent over 620 full days standing, walked over 37,000 miles, climbed and descended millions of stairs, got in and out of his mail truck hundreds of thousands of times, lifted and carried hundreds of tons of mail and packages, and performed millions of bending and twisting movements. He opined that appellant's standing for hundreds of hours, walking tens of thousands of miles, climbing and descending millions of stairs, climbing in and out of his truck hundreds of thousands of times, lifting and carrying hundreds of tons of mail, and bending, stooping, and twisting millions of times contributed to the development, aggravation, and acceleration of his left hip arthritis. Dr. Hartunian provided a medical explanation as to how and why appellant needed a hip replacement shortly after retiring. He opined that appellant's medical records and physical examination findings support a causal relationship between his heavy labor work activities and his hip arthritis. In addition, with the overwhelmingly high number of stressful and repetitive movements, as documented in his expanded employee statement, the scope and extent of those cumulative activities established a definite contribution of work factors to the aggravation, acceleration, progression, and hastening of appellant's arthritic disease process. Dr. Hartunian further opined that appellant's left hip arthritis was permanently aggravated as a result of having

⁵ Docket No. 99-0682 (issued November 4, 1999).

to have a hip replacement. He reasoned that the surgery permanently altered the joint anatomy, which represented a permanent aggravation of the arthritic hip condition.

By decision dated December 23, 2016, OWCP denied modification of its prior merit decision. It found that Dr. Hartunian's reports were insufficiently rationalized to establish causal relationship.

LEGAL PRECEDENT

OWCP's regulations define an occupational disease as a condition produced by the work environment over a period longer than a single workday or shift.⁶ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of FECA which provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination and resolve the conflict of medical evidence.⁷ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁸

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁹

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.¹⁰ Medical rationale includes a physician's detailed opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the

⁶ 20 C.F.R. § 10.5(q).

⁷ 5 U.S.C. § 8123; *M.S.*, 58 ECAB 328 (2007); *B.C.*, 58 ECAB 111 (2006).

⁸ *R.C.*, 58 ECAB 238 (2006).

⁹ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

¹⁰ *T.F.*, 58 ECAB 128 (2006).

diagnosed condition and specific employment activity or factors identified by the claimant.¹¹ The belief of a claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relationship.¹²

It is well established that where employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for periods of disability related to the aggravation. Where the medical evidence supports an aggravation or acceleration of an underlying condition precipitated by working conditions or injuries, such disability is compensable. However, the normal progression of untreated disease cannot be said to constitute aggravation of a condition merely because the performance of normal work duties reveal the underlying condition. For the conditions of employment to bring about an aggravation of preexisting disease, the employment must be such as to cause acceleration of the disease or to precipitate disability.¹³

ANALYSIS

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

OWCP found that a conflict of medical opinion existed between appellant's physician, Dr. Hartunian, and OWCP's referral physician, Dr. Hom, as to whether appellant's preexisting osteoarthritis of the left hip was causally related to appellant's work activities. Dr. Hartunian opined that appellant's rigorous physical duties as a letter carrier had hastened, accelerated, and exacerbated appellant's preexisting osteoarthritis to the point an arthroplasty was required, while Dr. Hom opined that appellant's work activities may have intermittently, temporarily aggravated his left hip condition, while he was working. Pursuant to 5 U.S.C. § 8123(a), OWCP properly referred appellant to Dr. Brennan, a Board-certified orthopedic surgeon, for an impartial medical evaluation and opinion on causal relation.

OWCP denied appellant's claim finding that the special weight of the medical opinion evidence was represented by the well-reasoned medical opinion of Dr. Brennan, which did not support work-related causality. It also subsequently denied modification as the additional medical reports from Dr. Hartunian and legal arguments raised were insufficient to overcome the special weight of Dr. Brennan's report or to create a new conflict of medical opinion.

The Board finds, however, that Dr. Brennan's opinion is equivocal and not well rationalized. Therefore, his report is insufficient to resolve the conflict between Dr. Hartunian and Dr. Hom. In his April 22, 2013 report, Dr. Brennan found that although appellant's symptoms from his underlying degenerative process may have been exacerbated by his work-related activity, it could not be found with any degree of certainty that the underlying degenerative condition was exacerbated. Thus, he opined that appellant's need for a hip replacement and his long-term disability was not directly related to his work-related activity as there was no permanent aggravation of his degenerative process.

¹¹ *A.D.*, 58 ECAB 149 (2006).

¹² *Lourdes Harris*, 45 ECAB 545, 547 (1994).

¹³ *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

Dr. Brennan's opinion on causal relation is equivocal and speculative. The Board has held that medical opinions which are equivocal or speculative are of diminished probative value.¹⁴ Dr. Brennan did not provide adequate medical rationale to explain the basis of his conclusion on causal relationship. The need for rationale is particularly important because appellant's left hip osteoarthritis is a preexisting condition.¹⁵ An opinion with respect to aggravation must differentiate between the effects of the work-related injury or disease and the preexisting condition.¹⁶ The Board has held that the physician must clearly explain the nature and extent of any aggravation, including whether the aggravation was temporary or permanent.¹⁷ If an aggravation is found to be temporary, the period of the temporary aggravation must be addressed. Dr. Brennan's reference to the lack of scientific evidence to support that the working conditions of a letter carrier would permanently aggravate or exacerbate a degenerative process does not provide sufficient medical rationale. He provided no discussion on whether the conditions of appellant's employment were sufficient to cause at least a temporary aggravation or material worsening of the underlying condition.¹⁸ This renders his opinion on causal relation of reduced probative value.

On appeal counsel asserts that it was legal error for OWCP to have accepted the opinions of Dr. Brennan, as well as that of the second opinion physician, Dr. Hom, as they were never provided with OWCP's definition for the standards of contribution and acceleration or asked about the controlling standards of causation. The Board notes that OWCP provided both Dr. Brennan and Dr. Hom a January 15, 2013 list of questions which contained its definitions of direct causation, aggravation, acceleration, and precipitation which adequately conform to OWCP's procedural manual.¹⁹ The Board notes, however, that the claims examiner failed to ask Dr. Brennan whether conditions of appellant's employment were sufficient to cause a temporary, permanent aggravation or a material worsening of the underlying condition.

For these reasons, Dr. Brennan's report is insufficient to resolve the conflict in medical opinion and his report cannot be afforded the special weight of an impartial medical examiner. On remand OWCP should amend its lists of questions and refer the case back to Dr. Brennan. If Dr. Brennan is unavailable or unwilling to render a supplemental opinion, OWCP shall refer appellant, the SOAF and the amended list of questions to a new impartial medical specialist.²⁰ Following this and any necessary further development, OWCP shall issue a *de novo* decision.

¹⁴ See *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (the Board has generally held that opinions such as the condition is probably related, most likely related, or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662 (2005) (medical opinions which are speculative or equivocal are of diminished probative value).

¹⁵ See *P.H.*, Docket No. 16-0654 (issued July 21, 2016); *S.R.*, Docket No. 16-0657 (issued July 13, 2016).

¹⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013).

¹⁷ See *R.H.*, Docket No. 15-1785 (issued January 29, 2016).

¹⁸ *Id.*

¹⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2(b) (January 2013).

²⁰ See *Harold Travis*, 30 ECAB 1071, 1078 (1979).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 23, 2016 is set aside and the case is remanded for further proceedings consistent with the above opinion.

Issued: July 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