

**United States Department of Labor
Employees' Compensation Appeals Board**

C.H., Appellant)	
)	
and)	Docket No. 18-0108
)	Issued: July 19, 2018
)	
U.S. POSTAL SERVICE, POST OFFICE,)	
Derry, NH, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 13, 2017 appellant filed a timely appeal from an April 27, 2017 merit decision and an August 29, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a bilateral hip injury causally related to factors of his federal employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts of the case as presented in the prior Board decision are incorporated herein by reference. The relevant facts are set forth below.

On August 31, 2015 appellant, then a 62-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) for right and left hip injuries. He claimed that he first became aware of his injuries on October 3, 2011 and realized their relationship to factors of his federal employment on April 14, 2015. Appellant did not stop work.

In an accompanying narrative statement dated August 27, 2015, appellant provided a detailed description of his rural letter carrier work duties and listed sports activities he had participated in during his formative years and as an adult. He noted that in October 2011 he developed pain in his left knee area, which he associated with his 2007 medial meniscus surgery. Appellant also noted that it was not until December 15, 2014 diagnostic testing results and appointments and consultations with his physicians, including Dr. Akhilesh Sastry, a Board-certified orthopedic surgeon, that he became aware of the need for hip replacements. He asserted that he and Dr. Sastry believed that his work duties contributed to the development of his bilateral hip osteoarthritis and need for hip replacements.

In a June 24, 2015 medical report, Dr. Sastry noted that appellant was referred to him for treatment of bilateral hip pain. He examined appellant and diagnosed advanced osteoarthritis. Dr. Sastry recommended hip replacements since nonoperative treatments had been ineffective in controlling appellant's pain. Appellant related to him that he worked 37 years as a rural postal carrier for the employing establishment. His work duties included repeated heavy lifting, twisting, turning, stretching, bending, squatting, repetitive motions, high-impact activities, sedentary positions for long periods of time, and ascending and descending movements of the hips. Dr. Sastry opined that these activities contributed to the development of appellant's bilateral hip osteoarthritis and need for hip replacement surgery.

By development letter dated September 22, 2015, OWCP advised appellant of the deficiencies in his claim and afforded him 30 days to submit additional medical evidence and respond to its inquiries.

In response to OWCP's development letter, appellant submitted additional medical reports dated October 3, 2011 to December 15, 2014 from various physicians who reported that appellant had bilateral hip degenerative joint disease and osteoarthritis, performed an intra-articular steroid injection in the left hip, and recommended hip arthroplasty.

By decision dated December 1, 2015, OWCP denied appellant's occupational disease claim, finding that he failed to submit a rationalized medical opinion explaining how his bilateral hip condition was caused or aggravated by the established work factors and not by his sports activities.

² Docket No. 17-0074 (issued March 17, 2017).

On February 17, 2016 appellant, through his representative, requested reconsideration of the December 1, 2015 decision. In a February 11, 2016 statement, he related that he had not participated in sports activities in over 40 years. Appellant also related that he had not run at any level in 10 years. He contended that he never had any injuries to his hips or sought medical treatment for them due to his outside activities.

Appellant submitted a copy of a previously received report. In addition, he submitted additional reports that included reports dated April 14 and August 25, 2015 and February 9, 2016 from Dr. Sastry. In these reports, Dr. Sastry examined appellant and reiterated his diagnosis of bilateral hip osteoarthritis and appellant's work duties. He also restated his opinion that these activities caused or contributed to the diagnosed condition and need for surgery.

By decision dated May 11, 2016, OWCP denied appellant's request for reconsideration. It found that the evidence submitted in support of the reconsideration request was cumulative or irrelevant and did not advance a relevant legal argument not previously considered or demonstrate legal error by OWCP.

On July 13 and 25, 2016 appellant, through her representative, again requested reconsideration of the December 1, 2015 decision. He submitted a June 28, 2016 report from Dr. Sastry who indicated that osteoarthritis, often called "wear and tear arthritis," had occurred in this case in both hips after years of use. He maintained that it resulted in deterioration of the cartilage that normally acted as a cushion between the bones that came together within hip joints where the top of the femur (ball) came together with the acetabulum (socket). Dr. Sastry related that, when the cartilage became worn at this juncture, the bones came into direct contact which caused pain due to the deterioration that had occurred. He reiterated that appellant had advanced osteoarthritis of the hips. Dr. Sastry also reiterated that appellant's work duties as a rural mail carrier included heavy lifting, twisting, turning, stretching, bending, squatting, repetitive motions, high impact activities, and ascending and descending movements of the hips. He maintained that there was no question these activities, which appellant had performed for 37 years, contributed to the diagnosis and need for hip replacement surgery. As Dr. Sastry indicated in his previous reports, he was aware of appellant's outside activities and still opined unequivocally that the noted physical requirements of appellant's job contributed to his diagnosis and need for surgery.

By decision dated September 16, 2016, OWCP denied appellant's request for reconsideration of the merits of the claim, finding that Dr. Sastry's June 28, 2016 report was cumulative in nature and substantially similar to evidence previously reviewed.

On October 17, 2016 appellant timely appealed OWCP's May 11 and September 16, 2016 decisions to the Board.

By decision dated March 17, 2017, the Board affirmed OWCP's May 11, 2016 decision, finding that it properly denied appellant's February 17, 2016 request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a). The Board found that appellant's request did not satisfy the criteria for obtaining a merit review of his claim. The Board, however, set aside OWCP's September 16, 2016 decision, finding that OWCP improperly denied appellant's July 13 and 25, 2016 requests for reconsideration. The Board found that, while Dr. Sastry's June 28, 2016 report reiterated his June 24, 2015 opinion on causal relationship, it provided greater medical

rationale or reasoning, lacking in his previous reports, in support of his conclusion on causal relationship and, thus, was relevant to the issue of whether OWCP properly denied appellant's claim for compensation. The Board explained that this rationale directly addressed OWCP's previous finding that the medical evidence submitted did not explain how the established work factors caused or aggravated appellant's current condition. Accordingly, the Board remanded the case for OWCP to conduct a merit review of the claim.

On remand OWCP reviewed the merits of appellant's claim. By decision dated April 27, 2017, it denied modification of its December 1, 2015 decision denying appellant's occupational disease claim. OWCP found that Dr. Sastry's June 28, 2016 report failed to sufficiently explain how the established work factors caused or contributed to appellant's bilateral hip condition.

On July 19, 2017 appellant requested reconsideration and submitted a June 19, 2017 letter from Dr. Sastry. In this letter, Dr. Sastry referenced his June 28, 2016 statement and claimed that it clearly addressed how appellant's work activities caused or contributed to the development of his condition. He maintained that his opinion was unequivocal. Dr. Sastry further maintained that he clearly addressed how appellant's federal employment had accelerated, aggravated, and altered the progression of his degenerative condition. He reviewed appellant's August 27, 2015 statement and related that it provided an extremely detailed description of his work activities. Dr. Sastry noted that he was well aware of this information. He was also well aware of appellant's outside activities detailed in appellant's February 11, 2016 statement. Dr. Sastry reviewed OWCP's March 17 and April 27, 2017 decisions and again contended that his opinion on causal relationship remained unequivocal.

By decision dated August 29, 2017, OWCP denied appellant's request for reconsideration of the merits of his claim. It found that Dr. Sastry's June 28, 2016 letter was cumulative and substantially similar to his previously submitted reports.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ 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 or specific condition for which compensation is claimed is causally related to the employment injury.⁴ 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.⁵

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

³ *Supra* note 1.

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 claimant. The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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 Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁷ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.⁸ 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.⁹

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision as to whether appellant's bilateral hip injury was causally related to factors of his federal employment.

In the prior appeal, the Board remanded appellant's case for OWCP to conduct a merit review based on Dr. Sastry's June 28, 2016 report. On remand OWCP denied modification of its prior decision denying appellant's occupational disease claim. It found that Dr. Sastry's June 28, 2016 report was not sufficiently rationalized to establish causal relationship between appellant's bilateral hip condition and the established employment factors.

In his June 28, 2016 report, Dr. Sastry noted that appellant worked as a rural mail carrier for 37 years and described appellant's duties to include heavy lifting, twisting, turning, stretching, bending, squatting, repetitive motions, high impact activities, and ascending and descending movements of the hips. He opined that there was no question the established work duties, which appellant had performed for 37 years, contributed to his advanced bilateral hip osteoarthritis and need for hip replacements. Dr. Sastry reasoned that years of use of appellant's hips while performing his rural mail carrier duties resulted in deterioration of the cartilage that normally acted as a cushion between the bones that came together within hip joints where the top of the femur ball came together with the acetabulum socket. He further reasoned that, when the cartilage became worn at this juncture, the bones came into direct contact, which caused pain due to the deterioration that had occurred. Dr. Sastry noted that, while he was aware of appellant's outside activities, his

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams, id.*

⁷ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.* 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

⁸ *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

opinion on the causal relationship between the noted physical requirements of appellant's job and need for surgery was unequivocal.

In a subsequent report dated June 19, 2017, Dr. Sastry reiterated that his June 28, 2016 opinion on causal relationship remained unequivocal. In addition, he maintained that he had sufficiently explained how appellant's federal employment had accelerated, aggravated, and altered the progression of his degenerative condition.

Accordingly, the Board finds that Dr. Sastry provided an affirmative opinion on causal relationship. Further, the Board finds that Dr. Sastry's reports, when read together, identified employment factors which appellant claimed caused his condition and explained how the identified employment factors caused or aggravated appellant's diagnosed bilateral hip osteoarthritis. The Board finds that Dr. Sastry's opinion, while not sufficiently rationalized to meet appellant's burden of proof, is sufficient given the absence of any opposing medical evidence, to require further development of the record.¹⁰ It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹¹ OWCP has an obligation to see that justice is done.¹²

The case will be remanded to OWCP for further action consistent with this decision. On remand after such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

In light of the Board's disposition regarding Issue 1, Issue 2 is rendered moot.

CONCLUSION

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

¹⁰ See *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *A.F.*, Docket No. 15-1687 (issued June 9, 2016). See also *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹¹ See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71 (1956).

¹² *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

ORDER

IT IS HEREBY ORDERED THAT the August 29 and April 27, 2017 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: July 19, 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