

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

T.M., Appellant)	
)	
and)	Docket No. 18-0149
)	Issued: September 5, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
TORRESDALE STATION, Philadelphia, PA,)	
Employer)	
)	

Appearances: *Case Submitted on the Record*
Jeffrey P. Zeelander, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 26, 2017 appellant, through counsel, filed a timely appeal from an October 17, 2017 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ Appellant timely requested an oral argument before the Board pursuant to section 501.5(b) of the Board's *Rules of Procedure*, 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated April 6, 2018, the Board denied the request for oral argument as the issue on appeal could be fully addressed on the record. *Order Denying Request for Oral Argument*, Docket No. 18-0149 (issued April 6, 2018).

ISSUE

The issue is whether appellant established that he sustained a left hip condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On May 31, 2016 appellant, then a 58-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed left hip end stage degenerative joint disease as a result of his federal employment duties. He first became aware of his hip condition and its relationship to his federal employment on August 12, 2014. In a supplemental statement dated June 28, 2016, appellant indicated that he had worked as a city letter carrier since July 6, 1988 and that his duties required lifting, bending, carrying, and walking. He alleged that these activities caused his severe hip condition for which he had a hip replacement. Appellant stated that he was filing an occupational disease claim for aggravation and acceleration of left hip degeneration. He described a typical day of work which included standing on a concrete floor with a rubber mat, lifting and carrying heavy trays of mail for sorting and loading into a case. Appellant described his work delivering mail which involved extensive walking while carrying a satchel hanging over his shoulder containing up to 35 pounds of mail and smaller parcels. He noted that his routes consisted of long blocks with many stairs and stoops, and the route took about seven hours to complete. Appellant stated that he walked about 15 miles daily. He noted that he had surgery on his hip on June 8, 2015, and returned to work at the end of August 2015.

In an April 28, 2016 report, Dr. Easwaran Balasubramanian, a Board-certified orthopedic surgeon, summarized appellant's medical treatment. He noted that he initially saw appellant on August 14, 2014. Dr. Balasubramanian described in detail his employment duties. He noted that he initially treated appellant with cortisone injections, which helped temporarily, but by February 2015 appellant's symptoms were so severe that he could no longer perform his carrier duties. As a result, Dr. Balasubramanian recommended that he not return to work. Appellant then underwent physical therapy three times a week, and after conservative treatment measures were exhausted, he was scheduled for a left hip replacement which occurred on June 8, 2015. Dr. Balasubramanian noted that appellant was currently back at work in a modified capacity, and had been working since September 2015. He noted that appellant had increasing pain with increasing activities while performing his work duties. Dr. Balasubramanian noted that his job involved being on his feet constantly, almost the entire workday for the past 27 years. He opined that appellant had left hip degenerative arthritis which was aggravated by his work as a mailman which involved casing mail while standing and then walking for substantially the rest of his work day carrying mail in a satchel weighing up to 35 pounds. Dr. Balasubramanian noted that appellant performed these duties for about seven hours a day on average and walked about 15 miles a day. He noted that this activity aggravated the preexisting hip degenerative arthritis such that he eventually needed to take him off work in the hopes that conservative treatment measures would alleviate his symptoms. When conservative treatment measures failed, Dr. Balasubramanian opined that this necessitated the total hip replacement and subsequent permanent modified-duty restrictions. He opined that appellant's employment activity aggravated the condition of his hip and contributed to his left hip replacement. Dr. Balasubramanian noted that appellant had a very good result from the hip replacement and was presently working with permanent restrictions due to his condition. The record also contains the June 8, 2015 report regarding the left total hip arthroplasty and further treatment notes from Dr. Balasubramanian.

By development letter dated August 1, 2016, OWCP informed appellant that further information was necessary to establish his claim, and afforded appellant 30 days to submit the necessary evidence.

On August 22, 2016 appellant responded to OWCP's questions. He stated that he first saw his family doctor regarding his hip issue on April 23, 2014 and underwent x-ray examination. Appellant noted that at that time he had been having left leg pain for approximately a year, but that his doctor told him it was just a minor condition and something he would have to live with. He stated that it was his understanding that he had three years to file his claim. Appellant noted that the full scope of his condition and severity took some time to unfold.

On September 1, 2016 OWCP referred the record to its medical adviser. In a September 25, 2016 report, Dr. Eric M. Orenstein, a Board-certified orthopedic surgeon, reviewed appellant's employment and medical history, and opined that appellant's left total hip arthroplasty performed by Dr. Balasubramanian was medically necessary for appellant's symptomatic avascular necrosis and osteoarthritis of the left hip, which had been poorly responsive to conservative treatment measures. However, he opined that appellant's avascular necrosis and associated osteoarthritis was not casually related to his occupation as a city letter carrier. Dr. Orenstein noted that, pursuant to the second edition of the American Medical Association, *Guides to the Evaluation of Disease and Injury Causation* (A.M.A., *Guides*),⁴ there was insufficient evidence to assign causation to heavy employment duties. He opined that more than likely there was a genetic component to osteoarthritis of the hip and that there is often a positive family history of osteoarthritis of the hip. Dr. Orenstein further noted that appellant had x-ray and pathologic evidence of vascular necrosis of the left hip leading to collapse and progressive osteoarthritis of the left hip that would not have a causal relationship to the claimant's employment-related activities as a city letter carrier. He therefore disagreed with Dr. Balasubramanian and opined that appellant's left total hip surgery was not causally related to his employment activities as a letter carrier.

By decision dated September 28, 2016, OWCP denied appellant's claim for compensation as it determined that the medical evidence failed to establish that the claimed medical condition was causally related to the established employment-related factors. OWCP accepted as established factors of federal employment that appellant was responsible for retrieving and loading letters and flat mails; bending and lifting trays; and sorting, twisting, pushing, walking, and carrying mail in a satchel on his shoulder.

By letter dated October 24, 2016, appellant, through counsel, requested review of the written record by an OWCP hearing representative. Counsel argued that the report of Dr. Orenstein was unrationalized as it was not based upon the evidence in the record, an understanding of the work duties performed by appellant, nor was it based upon a physical examination. He contended that it was not necessary to remand the case for a second opinion examination, but that the case should be accepted based on the opinion of Dr. Balasubramanian.

By decision dated January 13, 2017, the hearing representative determined that the case was not in posture for review. He determined that there was a conflict in the medical evidence between appellant's treating physician, Dr. Balasubramanian, and OWCP's medical adviser,

⁴ A.M.A., *Guides* (2nd ed. 2014).

Dr. Orenstein. Accordingly, the hearing representative remanded the case for referral to an impartial medical examiner, and any further development of the evidence as deemed necessary.

By letter to OWCP dated January 18, 2017, counsel argued that OWCP's medical adviser's memorandum could not form a conflict of medical opinion, and that notwithstanding the remand order, OWCP would err by scheduling a referee examination as the opinion of OWCP's medical adviser was not based on a physical examination, nor was it based upon a review of the factual and medical records in the file.

On February 23, 2017 OWCP referred appellant to Dr. Andrew Collier, a Board-certified orthopedic surgeon, for an impartial medical examination. In an April 5, 2017 report, Dr. Collier noted that appellant was a pleasant man who worked for the employing establishment as a letter carrier. He noted that, based on obtaining a history from appellant, performing a physical examination, and review of the record, he concluded that appellant developed avascular necrosis of the left hip due to idiopathic reasons. Dr. Collier noted that appellant had no history of steroid use, alcohol use, or any comorbidities that would cause avascular necrosis. He noted that appellant had no history of any trauma to the hip region which would include a dislocation and/or fracture of the femoral neck or infection. Dr. Collier opined that appellant's necrosis caused the collapse of the femoral head causing severe degenerative arthritis of the left hip. He opined that appellant's avascular necrosis was not caused by his employment-related activities. Dr. Collier noted that there was no literature relating repetitive use of the hip such as walking, climbing, bending, lifting or carrying to avascular necrosis. He noted that this was an inherent vascular phenomenon of the femoral head totally unrelated to appellant's employment activities. Dr. Collier noted that, if this condition was related to his work, then there would have been similar findings in the right hip, which did not exist. He noted that unfortunately, appellant's femoral head went on to collapse causing severe arthritis in the left hip necessitating the hip replacement. Dr. Collier opined that appellant started developing avascular necrosis in March 2014 with pain. He noted that it did not become radiographically apparent until later when his femoral head finally collapsed. Dr. Collier opined that the collapse of appellant's femoral head would have occurred regardless of appellant's work conditions; that is the natural course in history of avascular necrosis.

By decision dated May 1, 2017, OWCP denied modification of the September 28, 2016 decision based on a finding that the opinion of the impartial medical examiner was entitled to the special weight and established that appellant's left hip condition was not employment related.

On May 19, 2017 appellant, through counsel, requested review of the written record by an OWCP hearing representative. In an accompanying letter, counsel contended that "Dr. Collier was clear and unequivocal in concluding that appellant's condition does meet the standard of causation applicable to a FECA case, albeit framed in a manner that clearly evinces his disdain for appellant and apparent effort to provide a response that he thinks you must have paid him to provide negating causation." Counsel argued that as Dr. Collier noted that everyday walking in normal life would have led to the avascular necrosis causing the hip to collapse, and that as appellant did most of his walking between March 2014 and February 2015 while walking on his job, Dr. Collier clearly attributed the walking on appellant's job to the collapse of the hip that was damaged by avascular necrosis. He noted that Dr. Collier neglected to discuss the substantial

walking appellant did on his job. Counsel contended that the Board's decision in *T.B.*⁵ Required the case to be remanded and subsequently approved as Dr. Collier noted in that case that walking would have caused the need for hip condition and surgery. He asked OWCP to remand the claim with an instruction that appellant's hip condition and joint replacement must be accepted. Alternatively, counsel requested that the case be remanded with an instruction that OWCP provide a description of appellant's employment duties as well as a complete description of the standard of causation under FECA. He asked that OWCP direct Dr. Collier to explain why the walking appellant did on his job did not contribute and hasten the failure of the hip.

By decision dated October 17, 2017, the hearing representative affirmed the May 1, 2017 decision. She found that the special weight of the medical evidence rested with the opinion of Dr. Collier, the impartial medical specialist, who clearly explained that appellant's left hip condition was not causally related to or aggravated by his employment activity.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an employee of the United States within the meaning of FECA, that an injury was sustained 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.⁷

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.⁸ 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.⁹

Whether an employee sustained an injury requires the submission of rationalized medical opinion evidence.¹⁰ 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 evidence explaining the nature of the relationship between the diagnosed condition and

⁵ Docket No. 13-1979 (issued June 10, 2014).

⁶ *Id.*

⁷ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

⁸ 20 C.F.R. § 10.5(q).

⁹ *T.C.*, Docket No. 17-0872 (issued October 5, 2017).

¹⁰ *See J.Z.*, 58 ECAB 388 (2008); *see also M.H.*, Docket No. 15-0849 (issued July 22, 2016).

the specific employment factors identified by the employee.¹¹ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹²

Section 8123(a) of FECA provides that if there is a 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.¹³ The implementing regulations state that if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either the second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination.¹⁴ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose resolving the conflict, the opinion of such specialist, if sufficiently well-rationalized and based upon a proper factual background, must be given special weight.¹⁵

ANALYSIS

The Board finds that OWCP properly denied appellant's claim as he failed to establish that his avascular necrosis and left hip osteoarthritis, as well as his hip replacement surgery, was causally related to factors of his federal employment as city letter carrier.

OWCP determined that appellant had established factors of federal employment, including retrieving and loading letters and flat mails; bending and lifting trays; and sorting, twisting, pushing, walking, and carrying mail in a satchel on his shoulder. It also determined that appellant had established a medical diagnosis, *i.e.*, avascular necrosis and associated left hip osteoarthritis. However, OWCP denied appellant's claim as it determined that the special weight of the medical evidence rested with the opinion of the impartial medical examiner, Dr. Collier, who determined that appellant's left hip condition was not related to the duties of his federal employment.

Appellant's treating orthopedic surgeon, Dr. Balasubramanian, opined that appellant's left hip degenerative arthritis was aggravated by his duties as a mailman. He noted that his duties, which included casing mail while standing and then walking approximately 15 miles a day while carrying a 35-pound satchel, aggravated appellant's preexisting hip degenerative arthritis. Dr. Balasubramanian further opined that appellant's employment activity aggravated the condition in his hip and contributed to him needing the left hip replacement. However, OWCP's medical adviser, Dr. Orenstein, disagreed with Dr. Balasubramanian's assessment. Dr. Orenstein reviewed appellant's employment and medical history, and opined that the left total hip arthroplasty performed by Dr. Balasubramanian was medically necessary for appellant's symptomatic avascular necrosis and osteoarthritis. However, he opined that these conditions were not causally related to appellant's work as a city letter carrier. Dr. Orenstein noted that the A.M.A., *Guides*

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹² *James Mack*, 43 ECAB 321 (1991).

¹³ 5 U.S.C. § 8123(a); *see Y.A.*, 59 ECAB 701 (2006).

¹⁴ 20 C.F.R. § 10.321.

¹⁵ *V.G.*, 59 ECAB 701 (2008).

indicated that there was insufficient evidence to assign causation to heavy employment duties. He opined that it was more likely that there was a genetic component to appellant's osteoarthritis of the hip. Dr. Orenstein further noted that appellant had x-ray and pathologic evidence of vascular necrosis of the left hip leading which led to the collapse of the femoral head and progressive osteoarthritis of the left hip, and that vascular necrosis had no causal relationship to appellant's employment-related activities. The Board finds that the reports of Dr. Balasubramanian and Dr. Orenstein were in equipoise as to whether appellant's diagnosed conditions were causally related to factors of his federal employment.¹⁶ The Board has long held that an OWCP medical adviser may create a conflict in medical opinion with an examining physician.¹⁷ Accordingly, OWCP properly referred the case to Dr. Collier for an impartial medical examination.¹⁸

In an April 5, 2017 report, Dr. Collier determined that based on appellant's history, physical examination, and review of the record, appellant developed avascular necrosis of the left hip due to idiopathic reasons. He noted that there was no literature relating repetitive use of the hip such as walking, climbing, bending, lifting, or carrying to causing avascular necrosis. Dr. Collier opined that this was an inherent vascular phenomenon of the femoral head totally unrelated to appellant's employment activities. He noted that, if this condition was related to appellant's work, there would have been similar findings in the right hip, which did not exist. Dr. Collier further opined that the collapse of appellant's femoral head would have occurred regardless of appellant's work conditions.

The Board finds that Dr. Collier had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Collier is a specialist in the appropriate field.¹⁹ His opinion is based on proper factual and medical history and his report contained a detailed summary of this history.²⁰ Dr. Collier addressed the medical records and made his own examination findings and reached a reasoned conclusion regarding appellant's condition.²¹ Specifically, he found that appellant's avascular necrosis of the left hip was not caused by appellant's employment activities. Dr. Collier opined that appellant's avascular necrosis then caused the collapse of appellant's femoral head which caused severe degenerative arthritis in the left hip. He explained that the collapse of appellant's femoral head would have occurred regardless of his work conditions as that is in the natural course of history of avascular necrosis of the femoral head. The Board finds that his opinion constitutes the special weight of the medical evidence.²²

The Board thus finds that appellant failed to meet his burden of proof to establish a causal relationship between his left hip condition and the factors of his federal employment.

¹⁶ See *L.B.*, Docket No. 17-0597 (issued September 1, 2017).

¹⁷ *G.W.*, Docket No. 16-0525 (issued August 2, 2014).

¹⁸ See *L.C.*, Docket No. 17-1878 (issued March 7, 2018).

¹⁹ See *D.Q.*, Docket No. 17-0130 (issued March 12, 2018).

²⁰ See *S.W.*, Docket No. 17-0215 (issued September 19, 2017).

²¹ See *Michael S. Mina*, 57 ECAB 379 (2006).

²² See *H.A.*, Docket No. 16-1184 (issued April 20, 2017).

Counsel argues that Dr. Collier's report establishes causation. He argues that the Board can approve appellant's case based on a proper reading of Dr. Collier's report, but that at a minimum the Board should remand the case with instructions to Dr. Collier about the standard of causation applicable to a FECA claim and ask him to clarify his report. Counsel argues that Dr. Collier was clear and unequivocal in concluding that appellant's hip condition met FECA's standard of causation, albeit framed in a manner that clearly evinces his disdain for appellant and effort to provide a response that he thinks would please OWCP. He argues that Dr. Collier noted that walking hastened the collapse of appellant's, and that as appellant walked on his job, the Board can infer that appellant's employment activities contributed or hastened the collapse of the hip joint.

The Board finds that counsel's arguments are without merit. Initially, the Board finds that counsel's assertion that Dr. Collier had "disdain" for appellant is totally unsupported by the record. In fact, Dr. Collier described appellant as "pleasant." Counsel's allegation that Dr. Collier was clear and unequivocal in concluding that appellant's hip condition met FECA's standard of causation is also not supported by Dr. Collier's report. In fact, Dr. Collier was clear that appellant's left hip condition was unrelated to his federal employment. Dr. Collier clearly determined that there was no correlation between appellant's development of avascular necrosis of the left hip and appellant's federal duties. He then determined that his femoral head went on to collapse causing severe arthritis to the left hip and necessitating the hip replacement. Dr. Collier concluded that the collapse of his femoral head would have occurred regardless of work conditions even if he had not been working and just walking around doing nonwork-related activities, as this was the natural course of history of avascular necrosis of the femoral head. This does not imply that walking caused the osteoarthritis, as counsel contends.

Counsel cites to the Board's decision in *T.B.* in support of his claim.²³ In that decision, Dr. Collier noted that every step of appellant's life contributed to his arthritis, so the Board remanded for a clarification with regard to whether appellant's condition was aggravated by his employment. In the instant case, he clearly opined that the collapse of appellant's femoral head would have occurred regardless of the work conditions including walking.

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 did not establish that he sustained a left hip condition causally related to the accepted factors of his federal employment.

²³ *Supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 17, 2017 is affirmed.

Issued: September 5, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board