

ISSUE

The issue is whether appellant has met his burden of proof to establish bilateral hip osteoarthritis causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On December 20, 2016 appellant, then a 56-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral hip osteoarthritis as a result of his repetitive employment duties. He first became aware of his condition and of its relationship to his federal employment on September 13, 2016.

In an accompanying narrative statement, appellant described his employment duties for the employing establishment over the course of 22 years. He reported that he began working as a letter sorter in 1994 and then worked as a flat sorter beginning in 1997. Appellant explained that in 2000 he became a letter carrier, which since that time has remained his full-time position. He described his duties, which entailed sorting and delivering mail and packages and required repetitive bending, squatting, walking, stooping, twisting, pivoting, loading, unloading, lifting, standing, pushing, pulling, and carrying. Appellant reported spending approximately two to three hours daily casing mail, and seven hours delivering mail. He indicated that his mail routes included many hills, sidewalks, and stairs. Appellant stated that on his various routes he would have 400 to 600 deliveries, and he would walk six to eight miles per day while carrying his satchel and parcels, and climb and descend an average of at least 1,000 stairs per day. He noted a prior right hip replacement in 2013.

In an April 29, 2016 medical note, Dr. Justin W. Kung, a Board-certified diagnostic radiologist, reported that a March 24, 2016 left hip radiograph demonstrated overall findings consistent with moderate degenerative changes of the left femoroacetabular joint.

In a December 13, 2016 report, Dr. Byron V. Hartunian, a Board-certified orthopedic surgeon, noted examining appellant on September 13, 2016 for bilateral hip arthritis. He discussed appellant's medical history, reviewed diagnostic testing, and provided findings on physical examination. Dr. Hartunian described appellant's employment duties for the employing establishment since 1994 and noted no major injuries to the lower extremities during the course of his work as a letter carrier. A January 7, 2013 magnetic resonance imaging (MRI) scan of the right hip demonstrated advanced bilateral degenerative changes involving the hips, more noticeable on the right, and on April 2, 2013 appellant underwent a right total hip replacement with noncemented bipolar prosthesis. Dr. Hartunian reported that postoperatively, appellant was released to modified-duty work on July 2, 2013 and full-duty work approximately one month later. He noted that there was no specific trauma to his left hip and, while performing his employment duties in 2014 and 2015, appellant experienced increasing left hip pain, stiffness, and restricted mobility. X-rays of the left hip were taken on June 18, 2015, which revealed moderate-to-severe narrowing of the femoral acetabular space with osteophytes. Appellant elected not to undergo left total hip arthroplasty and continued to work as a letter carrier with his symptoms. A subsequent March 24, 2016 left hip x-ray revealed moderate degenerative changes of the left femoroacetabular joint. Dr. Hartunian diagnosed status post right total hip replacement for end-stage degenerative arthritis and left hip arthritis at the femoral acetabular joint. He opined that appellant's right hip condition

had stabilized and reached maximum medical improvement (MMI) on June 26, 2013, the date his physician released him to full-duty work, based on his right hip x-ray, which showed good position of his total hip replacement. Dr. Hartunian opined that appellant's left hip arthritis had stabilized and reached MMI on March 24, 2016, the date of his most recent radiograph.

Dr. Hartunian opined that appellant's work as a letter carrier aggravated and accelerated his bilateral hip osteoarthritis. He discussed appellant's repetitive work activity of ascending stairs, which placed loads on the lower extremity joints approximately three times the body weight and that descending stairs placed loads on the lower extremity joints approximately six times the body weight. Dr. Hartunian noted that ascending stairs with a full mail satchel added approximately 100 pounds to the effective body weight and descending stairs added approximately 200 pounds to the effective body weight, which placed repeated stresses on appellant's lower extremities. He noted that appellant's job required constant and repetitive walking, standing, squatting, stooping, climbing, bending, lifting, carrying, and twisting. These impact loading activities exerted repeated local stresses to his lower extremities.

Dr. Hartunian defined arthritis as a failure and loss of articular cartilage surface, explaining that the progression of arthritis was accelerated through a biological/chemical process that occurs by which excessive impact loading and repeated local stresses caused mechanical stresses on the cartilage surface, resulting in chronic inflammation. This inflammation results in an accelerated loss of articular cartilage in the affected areas, in this case the lower extremities. Inflammation results in a chemical change within the cartilage as it activates degradative enzymes, which cause the loss of the proteoglycans. Dr. Hartunian explained that the loss of proteoglycans are significant because, among other reasons, proteoglycans are responsible for cartilage resilience. He reported that appellant's arthritis was accelerated through this process of impact loading from repeated local stresses, causing chronic inflammation. Thus, Dr. Hartunian opined that loading and local stresses arising from repetitive motion activities such as knee bending, kneeling, lifting, climbing, stooping, twisting, squatting, and carrying contributed to the development and progression of appellant's lower extremity arthritis.

Accompanying Dr. Hartunian's December 13, 2016 medical report was a January 4, 2013 right hip x-ray, a January 7, 2013 right hip MRI scan, a March 26, 2013 right hip x-ray, and an April 2, 2013 operative report for a right bipolar hip arthroplasty.

By development letter dated February 21, 2017, OWCP informed appellant that the evidence of record was insufficient to support his claim. It advised appellant of the factual and medical evidence needed and was provided a questionnaire for completion. OWCP afforded appellant 30 days to submit the necessary evidence. In a separate development letter dated February 21, 2017, it requested the employing establishment provide comments pertaining to appellant's alleged occupational disease claim.

By letter dated March 10, 2017, counsel asserted that OWCP's February 21, 2017 development letter failed to acknowledge receipt of all of the documents submitted in support of his claim. He further argued that OWCP failed to consider Dr. Hartunian's December 13, 2016 report, which he claimed provided a comprehensive opinion that appellant's bilateral hip osteoarthritis was causally related to his federal employment duties.

In support of his claim, appellant resubmitted medical reports previously of record, including Dr. Hartunian's December 13, 2016 report. He also submitted a January 30, 2013 right hip arthrogram, a May 7, 2013 right hip x-ray, and progress notes dated April 22, 2013 through June 18, 2015 documenting treatment for hip osteoarthritis from Dr. Robert A. McGuirk, a Board-certified orthopedic surgeon.

In a March 14, 2017 memorandum, OWCP's Regional Director indicated that, in accordance with Chapter 2.800.9 of the FECA Procedure Manual,⁴ the claim for acceleration of osteoarthritis was being converted into an extended occupational disease claim as it required full scale development as to the nature of exposure, or the relationship of the condition to the exposure was not obvious. He noted that the claim was being converted to allow for tracking as an extended occupational disease claim as the medical evidence of record did not meet all of OWCP's requirements for adjudication, but established a *prima facie* case. The Regional Director instructed the claims examiner to prepare a statement of accepted facts (SOAF) and questions for the physician. The instructions provided that the claims examiner could then write directly to the attending physician (if of the appropriate specialty), or refer appellant for examination by a qualified specialist. Following the instructions from the Regional Director, no additional development of the claim is evident in the record.

By decision dated June 28, 2017, OWCP denied appellant's claim, finding that the medical evidence of record failed to establish that his bilateral hip osteoarthritis was causally related to the established factors of his federal employment. It noted that it had requested that appellant provide copies of all prior medical reports for treatment received of his bilateral hip condition, specifically noting all office visits, postoperative reports, and those medical reports that led to the January 4, 2013 x-ray and January 7, 2013 MRI scan. However, appellant failed to provide these medical records as requested. OWCP found that, as a result of incomplete medical records, it was unable to determine the full nature of appellant's condition because it did not have an accurate medical history.

By letter received on July 11, 2017, appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

A hearing was held on November 28, 2017 and appellant was represented by counsel. Counsel argued that Dr. Hartunian's report provided an uncontroverted opinion supporting causal relationship and that the claim should be accepted or remanded for further development.

In support of the claim, medical reports dated January 16 through May 7, 2013 were submitted from Dr. McGuirk who documented treatment for appellant's right hip osteoarthritis.

Appellant also submitted medical reports dated January 3 and 28, 2013 from Dr. Ronald F. Gomes, Board-certified in internal medicine, who documented treatment for generalized osteoarthritis, noting severe bilateral degenerative joint disease of the hips, right side worse than

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims, Extended Development*, Chapter 2.800.9 (June 2011).

left. Dr. Gomes' medical reports dated September 29, 2016 through June 1, 2017 were also submitted documenting treatment for left knee osteoarthritis.

By decision dated February 6, 2018, OWCP's hearing representative affirmed the June 28, 2017 decision, finding that the evidence of record failed to establish that his bilateral hip osteoarthritis was causally related to the established factors of federal employment. She noted that Dr. Hartunian's December 13, 2016 report was insufficient to establish appellant's claim because the record was devoid of any objective evidence demonstrating progression of bilateral hip osteoarthritis prior to January 2013 when appellant was found to have extensive bilateral degenerative joint disease of the hips. The hearing representative further noted that there was no medical evidence addressing causal relationship between the April 2, 2013 right hip arthroplasty and appellant's employment duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ 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.⁷ To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁸

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.⁹

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *K.C.*, Docket No. 18-1330 (issued March 11, 2019); *see Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁹ *Id.*

ANALYSIS

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

After receiving OWCP's February 21, 2017 development letter, appellant submitted numerous medical reports in support of his claim dating back to January 2013, as well as Dr. Hartunian's December 13, 2016 report. Following receipt of these medical reports and prior to the June 28, 2017 decision, the record reflects that the case file contained a March 14, 2017 memorandum from OWCP's Regional Director. In the memorandum, the Regional Director indicated that, in accordance with Chapter 2.800.9 of the FECA Procedure Manual,¹⁰ the claim for acceleration of osteoarthritis was being converted into an extended occupational disease claim as it required full scale development as to the nature of exposure, or the relationship of the condition to the exposure was not obvious. It noted that the claim was being converted to allow for tracking as an extended occupational disease claim as the medical evidence in the file did not meet all of OWCP's requirements for adjudication, but established a *prima facie* case. The Regional Director instructed the claims examiner to prepare a SOAF and questions for the attending physician. He then instructed the claims examiner to write directly to the attending physician (if of the appropriate specialty), or to refer appellant for examination by a qualified specialist.

The Board notes that the claims examiner did not follow the instructions of OWCP's Regional Director as noted in the March 14, 2017 memorandum. The claims examiner did not prepare a SOAF or questions for appellant's attending physician in an effort to further develop the claim, nor was appellant referred for examination by a qualified specialist. Despite having received medical reports documenting appellant's condition since January 2013, along with Dr. Hartunian's comprehensive medical report, OWCP's claims examiner took no further action on the claim.

The Board will remand the case for further development of the medical evidence. On remand OWCP should follow the instructions provided by OWCP's Regional Director in his March 14, 2017 memorandum. Following this and any other further development deemed necessary, OWCP shall issue a *de novo* merit decision on appellant's occupational disease claim.

CONCLUSION

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

¹⁰ *Supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: April 25, 2019
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