

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

P.Y., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Attica, MI, Employer**

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**Docket No. 18-1136
Issued: January 7, 2019**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On May 15, 2018 appellant, through counsel, filed a timely appeal from an April 26, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that her right hip condition was causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On February 15, 2017 appellant, then a 51-year-old sales and service associate/distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she developed pain in her right hip and lower back, and arthritis in her right hip while in the performance of duty.³ She alleged that she first became aware of her claimed conditions and of their relationship to her federal employment on November 2, 2016. She did not stop work.

In an accompanying narrative statement, appellant noted that she had previously filed claims for left knee and lower back injuries. She indicated that consistent with all of her prior arthritic issues, her right hip/side was overcompensating for these injuries as she walked and worked. Appellant's right hip started to bother her in March 2016 while she was having left knee trouble. Her right hip became extremely sore on August 1, 2016. Appellant described her work duties as working six days a week and distributing mail from large equipment to several carrier divisions, about two hours a day. Appellant also lifted, twisted, and turned to sort approximately 700 parcels in various locations within 15 feet of breaking them down on a daily basis. She lifted bags of parcels that weighed up to 60 pounds and single parcels that weighed up to 70 pounds. Appellant moved heavy wheeled equipment full of mail weighing up to 250 pounds and lifted tubs of mail weighing up to 45 pounds. She continuously bent and walked between various hampers and from the front to the back of the office to retrieve hold mail and notified parcels. Appellant stood at a counter line processing mail and accepting parcels of various lengths, sizes, and weight for approximately six hours on a daily basis. On approximately August 1, 2016 her right hip became extremely sore and she had very limited mobility such that she could not stand for any length of time and her gait was off. She sought medical treatment and an x-ray revealed joint narrowing and sclerosis in her right hip. Subsequently, on January 3, 2017 she received an injection in the right hip performed by Dr. Norman E. Walter, an attending Board-certified orthopedic surgeon.

In support of her claim, appellant submitted an August 15, 2016 pelvis and bilateral hip x-ray report from Dr. Leighton Lum, a radiologist. Dr. Lum provided an impression of mild degenerative osteoarthritis of both hips.

OWCP, by development letter dated February 22, 2017, advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional medical evidence, including a detailed narrative report from her physician which included a history of the injury and a medical explanation with objective evidence of how the reported work events caused or aggravated her

³ Appellant had filed prior claims before OWCP. These claims include OWCP File No. xxxxxx152, OWCP File No. xxxxxx575, and OWCP File No. xxxxxx095 for left knee injuries and OWCP File No. xxxxxx895 for a back injury. These claims have been combined with OWCP File No. xxxxxx152 serving as the master file. The current claim has not been combined with the prior claims.

condition. It also requested that the employing establishment submit medical evidence, if appellant had been treated at its medical facility.

In an undated narrative statement, appellant again related her history of injury. In 2005, she sustained a left knee injury at work and since that time she struggled with arthritis in her knees, hips, and lower back. Appellant continued to work and was treated by Dr. Walter. In late 2015, she again experienced left knee pain for which she scheduled surgery. During this same time, appellant's right hip became immobile and she struggled to walk, bend, lift her leg in and out of a car or shower, and walk up and down stairs. She noted the proposed medical treatment for her knees and right hip.

Appellant submitted reports dated December 22, 2016 and February 1, 2017 from Dr. Walter. In these reports, Dr. Walter noted that he had reviewed appellant's social, family, and surgical history. He also noted her complaints of pain in her hip and back, and difficulty externally rotating the hip. Dr. Walter reviewed outside films brought by appellant, which showed 50 percent narrowing in the hip. He maintained that this was the main source of her problem as documented on internal and external rotation. Dr. Walter prescribed pain medication to treat appellant's hip condition.

In response to OWCP's development letter, appellant requested a 30-day extension to submit a report from Dr. Walter regarding the causal relationship between her right hip condition and current work activities. No additional evidence was received by OWCP.

By decision dated March 27, 2017, OWCP denied appellant's occupational disease claim for failure to establish that the event occurred as alleged.

Appellant requested reconsideration on May 18, 2017. She submitted an April 27, 2017 report from Dr. Walter who related a history of his own treatment of appellant commencing on May 20, 2010 for a left knee injury she sustained after her prior work injury. Dr. Walter noted that he evaluated her on December 22, 2016, and February 1 and April 12, 2017 regarding her complaints of pain in her right hip and groin. On April 12, 2017 he reviewed x-rays which showed significant arthritis in the right hip. Appellant reported to him that her pain was due to problems she had with her opposite knee because she was limping badly and had an altered gait. Dr. Walter performed an injection and advised appellant that her right hip condition may be related to the altered gait she developed due to her left knee condition. He noted that the prolonged limping aggravated the preexisting arthritis in her right hip and necessitated injection therapy.

By decision dated August 14, 2017, OWCP affirmed its March 27, 2017 decision, as modified. It found that appellant had established fact of injury as she had substantiated the implicated employment factors. However, the claim remained denied because the medical evidence of record was insufficient to establish that appellant's diagnosed right hip condition was caused or contributed to by the accepted employment factors. OWCP noted that, based on Dr. Walter's April 27, 2017 report, appellant should pursue the argument that her right hip condition was a consequence of the accepted left knee condition under that claim.

On April 11, 2018 appellant, through counsel, requested reconsideration and submitted additional medical evidence from Dr. Walter. In a March 7, 2018 letter, Dr. Walter reiterated the

history of his own treatment of appellant. He further noted her continuing left knee symptoms since 2010 and severe back and right hip pain following her work-related knee injury. Dr. Walter maintained that the back pain and right hip joint space narrowing (osteoarthritis), which required appellant to undergo a right total hip arthroplasty, were directly correlated to her prior left knee injuries which resulted in her having many years of an altered gait. He concluded that it was his firm belief that appellant's employment contributed to that and would continue to do so without appropriate restrictions.

By decision dated April 26, 2018, OWCP denied modification of its prior decision. It found that appellant failed to submit rationalized medical opinion evidence explaining how her diagnosed right hip condition was caused or aggravated by the established work factors. OWCP noted that, based on Dr. Walter's March 7, 2018 report, she should seek expansion of the acceptance of her left knee claim to include a consequential right hip injury.

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 filed within the applicable time limitation, 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.⁵ 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.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.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on

⁴ *Supra* note 2.

⁵ *T.H.*, Docket No. 17-0747 (issued May 14, 2018); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *T.H., id.*; *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *Victor J. Woodhams, id.*

⁸ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.* 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her diagnosed right hip condition was causally related to the accepted factors of her federal employment.

Appellant submitted a series of reports from her physician, Dr. Walter. In reports dated April 27, 2017 and March 7, 2018, Dr. Walter opined that appellant's back pain and right hip osteoarthritis were caused by her prior work-related left knee injuries. As Dr. Walter related appellant's diagnosed conditions to prior employment injuries, his opinion is insufficient to establish that she sustained back and right hip conditions due to the accepted employment factors.¹¹ His remaining reports dated December 22, 2016 and February 1, 2017 found that appellant's right hip condition was caused by 50 percent narrowing in the hip as demonstrated by x-rays. However, Dr. Walter failed to provide a firm diagnosis or specifically attribute a condition to the accepted employment factors. Without a firm diagnosis supported by medical rationale, his opinion is of little probative value.¹² For the reasons set forth, the Board finds that Dr. Walter's reports are of insufficient probative value to meet appellant's burden of proof.

The diagnostic study report of record from Dr. Lum is of limited probative value. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and a diagnosed condition.¹³ The Board finds, therefore, that this evidence is insufficient to establish appellant's claim.

The Board finds that appellant has failed to submit rationalized, probative medical evidence sufficient to establish a right hip injury causally related to the accepted employment factors. Appellant therefore has not met her burden of proof.

On appeal counsel contends that OWCP's April 26, 2018 decision is contrary to fact and law. For the reasons set forth above, the Board finds that the weight of the medical evidence of record does not establish that appellant's right hip condition was caused or contributed to by the accepted employment factors.

⁹ *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 6.

¹¹ *J.M.*, Docket No. 07-0974 (issued December 12, 2007).

¹² See *Samuel Senkow*, 50 ECAB 370 (1999).

¹³ See *K.V.*, Docket No. 18-0723 (issued November 9, 2016).

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 has not met her burden of proof to establish that her right hip condition was causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 7, 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