

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

F.K., Appellant)	
)	
and)	Docket No. 19-1804
)	Issued: April 27, 2020
THE PRESIDIO TRUST, San Francisco, CA,)	
Employer)	
)	

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, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 27, 2019 appellant, through counsel, filed a timely appeal from a May 24, 2019 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 his burden of proof to establish a right hip condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On October 10, 2018 appellant, then a 47-year-old carpenter, filed an occupational disease claim (Form CA-2) alleging that he developed degenerative osteoarthritis of the right hip due to work-related activities such as carrying heavy loads, stepping over railings, and walking over uneven surfaces. He indicated that he first became aware of the condition on September 10, 2018 and first attributed the condition to factors of his federal employment on September 11, 2018. Appellant did not stop work.

In an accompanying narrative statement, dated September 20, 2018, appellant noted that he had been experiencing intermittent right hip pain that had occurred sporadically during his workday over the past few months. He indicated that the hip pain was aggravated by and interfered with his ability to carry materials, walk up and down stairs, pick up heavy items, step over railings, and maneuver around his job site. Appellant reported that he frequently carried heavy materials, greater than 50 pounds, up and down stairs or over uneven terrain while in the performance of duty. He also reported that he often performed physically-demanding manual labor such as framing, roofing, demolition, and pouring concrete slabs for decks. Appellant noted that he had a similar problem with his left hip that resulted in a total left hip replacement in May 2016.

In a September 12, 2018 report, Dr. Gordon Lundy, a Board-certified orthopedic surgeon, noted appellant's complaints of right hip pain from the groin into the thigh associated with his work activities, particularly walking up and down stairs. He reviewed x-rays of appellant's pelvis and right hip and diagnosed right hip post-traumatic arthritis. Dr. Lundy noted that appellant had indicated that he felt his condition was work related.

In a development letter dated November 9, 2018, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP indicated that it was in the process of scheduling a second opinion examination for appellant to determine whether his employment contributed to his alleged condition. It afforded him 30 days to submit the necessary evidence.

On November 9, 2018 OWCP prepared a statement of accepted facts (SOAF) wherein it noted that appellant attributed his right hip condition to working as a carpenter since 1998, carrying materials up and down stairs, picking up heavy items, and stepping over rails. It also noted that he had preexisting or concurrent medical conditions of bilateral hip osteoarthritis and left hip replacement.

On November 14, 2018 OWCP referred appellant along with the SOAF and the medical record to Dr. Laura Sciaroni, a Board-certified orthopedic surgeon, for a second opinion examination. In a January 9, 2019 report, Dr. Sciaroni noted his complaints of ongoing right hip and right groin pain. She reported that, based on appellant's history, his physical examination

findings, and a review of the medical record, she was unable to connect his osteoarthritis to his federal employment. Dr. Sciaroni opined that “osteoarthritis of the hip is not a common and expected consequence of a career in carpentry or heavy labor,” and that “[o]steoarthritis of the hip is a degenerative condition which commonly arises spontaneously.” As such, she found that there were no specific factors that would cause her to attribute appellant’s hip osteoarthritis to industrial causes. In an accompanying January 8, 2019 work capacity evaluation (Form OWCP-5c), Dr. Sciaroni indicated that appellant was capable of performing his usual job duties without restriction.

By decision dated January 16, 2019, OWCP denied appellant’s claim finding that the medical evidence submitted was insufficient to establish a causal relationship between appellant’s right hip condition and the accepted factors of his federal employment. Specifically, it explained that Dr. Sciaroni’s report established that his right hip osteoarthritis was degenerative in nature and not caused by factors of his federal employment. OWCP concluded, therefore, that the requirements had not been met to establish an injury or medical condition causally related to the accepted employment factors.

On January 25, 2019 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. A hearing was held on April 23, 2019. Appellant provided testimony and explained that he believed that his right hip osteoarthritis was related to his work duties because he had worked at the employing establishment for 20 years and had not worked anywhere else during that time. Counsel requested an impartial medical evaluation because he believed that there was a conflict between the medical opinions of appellant’s attending physician and the second opinion physician. He further argued that the medical opinion of the second opinion physician should be given lesser probative value since her finding that appellant could not have developed right hip osteoarthritis due to his work duties was overreaching, conclusory, and indicative of bias. The record was held open for 30 days. No additional evidence was received.

By decision dated May 24, 2019, OWCP’s hearing representative affirmed the January 16, 2019 decision. He found that the medical evidence of record was insufficient to establish a causal relationship between appellant’s right hip osteoarthritis and the accepted factors of his federal employment. The hearing representative further noted that Dr. Sciaroni’s opinion was persuasive as it referenced the facts of the case.

LEGAL PRECEDENT

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 timely filed within the applicable time limitation period of FECA,⁴ 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

³ *Id.*

⁴ *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.⁵ 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.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) 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 identified employment factors.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹⁰

ANALYSIS

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

OWCP denied appellant's claim finding that Dr. Sciaroni's second opinion report dated January 9, 2019 constituted the weight of the medical evidence. Counsel has argued that Dr. Sciaroni's finding that appellant could not have developed right hip osteoarthritis due to his work activities was overreaching, conclusory, and indicative of bias.

In her January 9, 2019 report, Dr. Sciaroni noted that she had reviewed the medical record and the SOAF. She determined that appellant had right hip osteoarthritis, but noted that there were no specific employment factors that would cause her to attribute the diagnosed condition to industrial causes. The Board finds that Dr. Sciaroni's opinion lacked medical rationale. Dr. Sciaroni indicated that appellant's right hip osteoarthritis was nonindustrial, but did not

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ 20 C.F.R. § 10.115; *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *See T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *E.W.*, *supra* note 4; *Gary L. Fowler*, 45 ECAB 365 (1994).

provide adequate medical rationale to explain the basis of her conclusory opinion.¹¹ She did not explain why his osteoarthritic right hip condition was solely due to nonoccupational factors. Any contribution to appellant's condition by the accepted employment factors would render his condition compensable.¹² Dr. Sciaroni failed to address his work duties, as related in the SOAF, in her medical report. It is therefore unclear whether her opinion was based upon an accurate understanding of appellant's work duties. As such, the Board finds that Dr. Sciaroni's opinion is of insufficient probative value to carry the weight of the medical evidence, and the case must be remanded for further development.¹³

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.¹⁴ While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹⁵

Once OWCP undertakes development of the record, it must procure medical evidence that will resolve the relevant issues in the case.¹⁶ On remand, it should obtain a supplemental opinion from its second opinion physician, Dr. Sciaroni, which contains adequate medical rationale to resolve the issue of whether appellant sustained a right hip condition causally related to the accepted factors of his federal employment. If Dr. Sciaroni is unavailable or unwilling to provide a supplemental opinion, OWCP shall refer appellant, together with a SOAF and a list of specific questions, to a second opinion physician in the appropriate field of medicine to resolve the issue.¹⁷ Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's occupational disease claim.¹⁸

CONCLUSION

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

¹¹ See *T.S.*, Docket No. 18-1702 (issued October 4, 2019).

¹² See *J.B.*, Docket No. 17-2021 (issued August 8, 2018); *G.G.*, Docket No. 17-0504 (issued August 8, 2017); *Beth C. Chaput*, 37 ECAB 158 (1985) (it is not necessary to show a significant contribution of employment factors to a diagnosed condition to establish causal relationship).

¹³ *Supra* note 11.

¹⁴ See *B.W.*, Docket No. 19-0965 (issued December 3, 2019).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Supra* note 11.

¹⁸ *Id.*

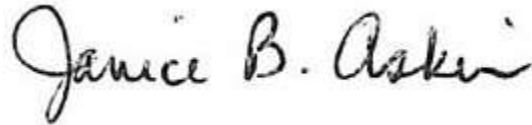
ORDER

IT IS HEREBY ORDERED THAT the May 24, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 27, 2020
Washington, DC



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



Janice B. Askin, Judge
Employees' Compensation Appeals Board



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