



## ISSUE

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include osteoarthritis of the right hip causally related to the accepted January 28, 2014 employment injury.

## FACTUAL HISTORY

On January 31, 2014 appellant, then a 58-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 28, 2014 he twisted and felt pain in his right knee when casing mail while in the performance of duty. On April 4, 2014 OWCP accepted his claim for exacerbation of localized primary osteoarthritis of the right lower leg. It authorized arthroscopic surgery on October 2, 2014 and a total right knee replacement on January 20, 2016. Appellant stopped work on January 31, 2014 and OWCP placed him on the periodic rolls commencing May 8, 2015.

Appellant was treated by Dr. Scott L. Russinoff, a Board-certified orthopedist, from February 4 to March 28, 2014, for a right knee injury sustained when he was twisting at work on January 28, 2014.<sup>4</sup> Dr. Russinoff diagnosed mild exacerbation of right knee arthritis. On April 29, 2014 appellant reported continued right knee pain and right hip pain and noted his knee would buckle and therefore was unable to return to work. Dr. Russinoff noted that x-rays of both knees and right hip demonstrated mild arthritis. He diagnosed right knee pain with secondary hip pain. On July 17, 2014 Dr. Russinoff noted that appellant presented with right knee and hip pain in the groin region. He diagnosed a lateral meniscus tear of the right knee and exacerbation of right hip arthritis causally related to his accepted employment injury.

On May 23, 2014 appellant came under the treatment of Dr. Douglas J. Fauser, a Board-certified orthopedist, for a right shoulder and right leg injury sustained when he “rolled his tractor.” This treatment continued through July 22, 2014. Dr. Fauser diagnosed a rotator cuff tear of the right shoulder and contusion of the right leg.

Appellant continued to be treated by Dr. Fauser on May 11, 2015 for increasing symptomology referable to the right knee which affected his gait pattern. Appellant reported using a cane outdoors and having a corticosteroid injection into the right hip. Dr. Fauser noted that appellant had a degenerative right hip and an externally rotated gait pattern and noted findings on examination of an effusion over the right knee, externally rotated gait pattern, and pain with internal rotation of the hip. He diagnosed osteoarthritis of the right knee and hip and recommended a total right knee replacement.<sup>5</sup>

In reports dated January 6 and 13, 2016, Dr. Fauser noted appellant’s right hip pain which he concluded was compensatory in nature after his right knee injury. Appellant reported that over the prior month or two he experienced increasing right-sided groin and hip pain which were more symptomatic than his right knee. Evaluation of the right hip revealed restricted range of motion

---

<sup>4</sup> A magnetic resonance imaging (MRI) scan of the right knee, dated May 5, 2014, revealed a tear of the posterior horn of the lateral meniscus and osteoarthritis.

<sup>5</sup> In an August 10, 2015 report, an OWCP district medical adviser (DMA) concurred with Dr. Fauser’s recommended total right knee replacement.

and weakness of hip abduction. X-rays of the right hip revealed moderate-to-severe osteoarthritis secondary to compensating for his right knee, and end-stage osteoarthritis of the patellofemoral joints. Dr. Fauser again recommended a total right knee replacement as well as an intra-articular corticosteroid injection into the ipsilateral hip. On January 20, 2016 he performed a fluoroscopically guided therapeutic injection of the right hip. Dr. Fauser performed a right total knee arthroplasty on January 26, 2016 and diagnosed end-stage patellofemoral arthrosis of the right knee. Appellant experienced postoperative complications and developed a deep venous thrombosis (DVT) of the right leg and arthrofibrotic total right knee replacement. On March 15, 2016 Dr. Fauser performed a manipulation of the right knee under anesthesia and diagnosed arthrofibrosis of the right knee, status post total knee replacement.

In a report dated April 21, 2016, Dr. Fauser noted that appellant sustained a right knee injury at work on January 28, 2014 and subsequently underwent arthroscopic surgery in October 2014, viscosupplementation injections, physical therapy, a right total knee replacement, and manipulation of the right knee under anesthesia. He advised that due to appellant's work-related injury, altered gait, stiffness, and weakness in the knee he had developed compensatory right hip pain. Dr. Fauser noted that x-rays of the right hip and pelvis revealed osteoarthritis and opined that this condition was aggravated by the original work-related right knee injury. He indicated that due to the severe nature of his hip pain appellant underwent an injection on January 20, 2016. In a progress notes dated April 25 and May 23, 2016, Dr. Fauser reported appellant's increasing complaints of right hip pain. He noted during physiotherapy for the knee replacement he experienced increased groin pain into his right thigh and buttock. Dr. Fauser opined that appellant's hip condition should be included as part of his workers' compensation claim.

Appellant presented in follow up to Dr. Fauser on June 29, 2016 after finishing his regimen of physical therapy for his right knee. He noted recovery from his right knee injury had been hindered by his right hip osteoarthritis. Appellant indicated that he never had issues, including stiffness, with his hip prior to his work-related injury. Dr. Fauser diagnosed status post right total knee replacement and right hip osteoarthritis.

On July 1, 2016 OWCP referred appellant to Dr. Louis Nunez, a Board-certified orthopedist, for a second opinion examination to determine whether appellant had residuals of his work-related conditions, whether he sustained a right hip injury causally related to the January 28, 2014 work injury, and whether he could return to work subject to restrictions.

In a July 21, 2016 report, Dr. Nunez noted findings on physical examination of limited range of motion of the right hip of 100/130 degrees, limited range of motion for the right knee, and a well-healed midline incision of the right knee with an effusion. He noted that appellant had disabling residuals of the right knee including limited flexion. Dr. Nunez opined that he required continued treatment for his right knee and advised that he had disability due to the injury of January 28, 2014 as well as from the right hip condition which was not related to the January 28, 2014 injury. He concluded that appellant's disability was due to the significant limitation in range of motion in the right knee, as well as the nonwork-related right hip condition. Dr. Nunez noted that he had not reached maximum medical improvement and was not capable of returning to his date-of-injury position. He recommended additional treatment of aspiration of his knee joint and additional physical therapy. In a work capacity evaluation dated July 21, 2016, Dr. Nunez noted that appellant could return to work for four hours a day with restrictions.

On September 1, 2016 OWCP informed appellant that his claim was accepted for exacerbation of the right lower leg osteoarthritis. It found, however, that the evidence then of record was insufficient to establish that the acceptance of his claim should be expanded to include the additional condition of osteoarthritis of the right hip. OWCP advised appellant of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. It afforded him 30 days to respond.

On August 24, 2016 Dr. Fauser noted that appellant underwent an intra-articular corticosteroid injection into the right hip which provided 60 percent relief in symptoms. Findings on examination revealed restricted range of motion of the right hip with mild pain. Dr. Fauser diagnosed right hip osteoarthritis.

In a statement dated September 26, 2016, appellant requested that the acceptance of his claim be expanded to include his right hip condition claiming that Dr. Russinoff and Dr. Fauser supported his claim that his hip exacerbation was caused by the accepted employment-related knee injury.

By decision dated October 3, 2016, OWCP denied appellant's request to expand the acceptance of his claim to include the additional condition of osteoarthritis of the right hip finding that the evidence of record failed to establish that the condition was causally related to the accepted employment injury.

In an October 12, 2016 report, Dr. Fauser indicated that appellant's right knee was progressing, but his right hip hindered his ability to exercise and build strength. He diagnosed osteoarthritis of the right hip with no prior history of hip pain. Dr. Fauser indicated that an altered gait, and ambulating with an antalgic gait on the hip after his knee injury, had aggravated his hip pain. He diagnosed status post right total knee replacement with right hip osteoarthritis.

On October 14, 2016 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated November 23, 2016, an OWCP hearing representative vacated the October 3, 2016 decision and remanded the case for further medical development. The hearing representative instructed OWCP to request a supplemental report from Dr. Nunez that included rationale in support of his conclusion that appellant's hip condition was not causally related to his employment injury.

In an October 21, 2016 report, Dr. Fauser noted that appellant experienced only temporary relief from intra-articular corticosteroid injections and opined that appellant's right hip pain was the result of compensating from his original work-related, twisting injury. A radiograph of the right hip and pelvis dated January 13, 2016 revealed moderate-to-severe osteoarthritis of the left hip. Dr. Fauser indicated that appellant had no prior history of hip problems despite having underlying osteoarthritis. He opined that appellant's hip pain was a direct result of compensating from his right knee.

On November 30, 2016 Dr. Fauser noted that appellant experienced worsening right hip pain. He noted that appellant's hip significantly impacted his ability to continue to recover from his right knee replacement as he had groin and thigh pain, and difficulty ascending and descending stairs. Physical examination revealed limited internal and external rotation of the hip and a nonantalgic gait. Dr. Fauser diagnosed right hip osteoarthritis.

On December 2, 2016 OWCP requested clarification from Dr. Nunez, specifically asking him to explain why he disagreed with appellant's treating physician who opined that the right hip pain developed as a consequential injury caused by his altered gait and avoidance of right-sided weight bearing.

In a report dated January 9, 2017, Dr. Fauser noted that appellant was one year post right total knee replacement, but his right hip precluded significant advancement in function secondary to well-localized groin and thigh pain and marked restriction of range of motion. He recommended hip arthroplasty on the right side.

In response to OWCP's inquiry, Dr. Nunez submitted a supplemental report dated January 27, 2017 in which he indicated that Dr. Russinoff's April 29, 2014 note reported x-rays of both knees and right hip revealed arthritis present prior to the work-related injury. He indicated that the bilateral hip arthritis was therefore preexisting. Dr. Nunez advised that despite putting less weight on the right leg he experienced persistent pathology of the right knee because the right total knee replacement may be loose. He indicated that the fact that appellant still has pathology and complaints with the right knee had no bearing on his underlying osteoarthritis of the right hip and therefore the additional condition was not related to the injury sustained in January 2014. Dr. Nunez noted disagreement with appellant's treating physician who opined that the right hip had developed as a consequential injury caused by his altered gait and avoidance of right-sided weight bearing. He opined that the right leg would not be considered consequential to the right knee, but rather the normal progression of the preexisting osteoarthritis.

In a work capacity evaluation (Form OWCP-5c) dated February 27, 2017, Dr. Fauser noted that appellant could return to work two hours a day with sedentary duties. In a report dated February 27, 2017, he saw appellant in follow up for his right hip osteoarthritis and noted that he reported using a cane secondary to right hip pain.

By decision dated March 8, 2017, OWCP denied appellant's request to expand the acceptance of his claim to include osteoarthritis of the right hip finding that the evidence of record failed to establish that this additional condition was causally related to the accepted employment injury.

On March 13, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on August 30, 2017.

On April 11, 2017 Dr. Fauser treated appellant in follow-up for right hip pain, stiffness, and pain with ambulation. He noted in a May 24, 2017 report that appellant presented with marked symptomology of groin pain, thigh pain, rest and startup pain, and buckling. Dr. Fauser recommended a total hip replacement.

On July 5, 2017 Dr. Joel S. Buchalter, a Board-certified orthopedic surgeon, noted that appellant was recommended for a right total hip replacement. He noted that appellant was clinically static in terms of his pain on a daily basis and was unable to participate in physical therapy because it was too painful.

In a report dated August 17, 2017, Dr. Andrew Peretz, a Board-certified orthopedic surgeon, noted that appellant was static, exhibited start up stiffness and pain, and was unable to ambulate for prolonged periods of time due to groin, anterior thigh, and laterally based hip pain.

By decision dated October 18, 2017, an OWCP hearing representative affirmed the decision dated March 8, 2017.

### **LEGAL PRECEDENT**

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and an accepted injury must be based on a complete factual and medical background.<sup>8</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale which, explains the nature of the relationship between the diagnosed condition and the accepted employment injury.<sup>9</sup>

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to a claimant's own intentional misconduct.<sup>10</sup> Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>11</sup>

Section 8123(a) of FECA provides that, if there is 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.<sup>12</sup> The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or a DMA, OWCP shall appoint a third physician to make an examination.<sup>13</sup> 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 of

---

<sup>6</sup> *M.B.*, Docket No. 19-0485 (issued August 22, 2019); *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>7</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> *Id.*

<sup>10</sup> *See S.M.*, Docket No. 19-0397 (issued August 7, 2019); *Mary Poller*, 55 ECAB 483, 487 (2004); 1 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* 10-1 (2006).

<sup>11</sup> *A.T.*, Docket No. 18-1717 (issued May 10, 2019); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

<sup>12</sup> 5 U.S.C. § 8123(a); *see Y.A.*, 59 ECAB 701 (2008).

<sup>13</sup> 20 C.F.R. § 10.321.

resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>14</sup>

### ANALYSIS

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

In a July 21, 2016 report, Dr. Nunez indicated that appellant had disability due to the employment injury of January 28, 2014 as well as from the right hip condition, but advised that the right hip condition was not related to the accepted January 28, 2014 employment injury. In a supplemental report dated January 27, 2017, he indicated that the bilateral hip arthritis was preexisting, per diagnostic studies. Dr. Nunez opined that the fact that appellant still had pathology and complaints with the right knee has no bearing on his underlying osteoarthritis of the right hip and therefore the hip condition was not related as a consequential condition to his accepted right knee condition. He noted his disagreement with appellant's treating physician whose opinion was that the right hip condition had developed as a consequential injury caused by his altered gait and avoidance of right-sided weight bearing. Dr. Nunez opined that the right leg would not be considered consequential to the right knee, but rather the normal progression of the preexisting osteoarthritis.

In a report dated April 21, 2016, Dr. Fauser noted that appellant had sustained a January 28, 2014 employment injury and opined that as a consequence of appellant's work-related knee injury, altered gait, stiffness, and weakness, he had developed compensatory right hip pain. He noted that x-rays of the right hip and pelvis revealed osteoarthritis and he opined that this condition had been aggravated by the original right knee injury. On June 29, 2016 Dr. Fauser noted that appellant's recovery from his right knee injury was hindered by his right hip osteoarthritis. He diagnosed status post right total knee replacement and right hip osteoarthritis. Similarly, on October 21 and November 30, 2016, Dr. Fauser opined that appellant's right hip condition had developed as a result of compensating from his original work-related twisting injury. He indicated that appellant had no prior history of hip problems despite having an underlying osteoarthritis of the hip. Dr. Fauser opined that appellant's hip pain was therefore a direct result of compensating on his right knee.

The Board finds that a conflict in medical opinion has been created between appellant's attending physician and that of the second opinion physician regarding whether appellant's osteoarthritis of the right hip was caused or aggravated by the accepted right knee condition following his January 28, 2014 employment injury.<sup>15</sup> Section 8123 of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the employee's physician, OWCP shall appoint a third physician who shall make an examination.<sup>16</sup>

As there remains an unresolved conflict in medical opinion regarding whether appellant's diagnosed right hip condition is causally related to, or a consequence of, the accepted January 28,

---

<sup>14</sup> *K.S.*, Docket No. 19-0082 (issued July 29, 2019); *V.G.*, 59 ECAB 635 (2008).

<sup>15</sup> *See S.M.*, Docket No. 19-0397 (issued August 7, 2019).

<sup>16</sup> *Supra* note 12.

2014 employment injury the case shall be remanded to OWCP for creation of an updated statement of accepted facts and referral to an appropriate specialist to obtain an impartial medical opinion regarding whether the acceptance of appellant's claim should be expanded to include his diagnosed right hip condition. Following this and any other development deemed necessary, OWCP shall issue a *de novo* decision.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 18, 2017 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: February 19, 2020  
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