

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

P.D., Appellant)	
)	
and)	Docket No. 19-1458
)	Issued: February 10, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Medway, MA, Employer)	
)	

Appearances:
John DeGeneres, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 25, 2019 appellant, through counsel, filed a timely appeal from a January 3, 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.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 oral argument before the Board. By order dated February 3, 2020, the Board exercised its discretion and denied the request as the matter could be adequately addressed based on a review of the case record. *Order Denying Oral Argument*, Docket No. 19-1458 (issued February 3, 2020).

ISSUE

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

FACTUAL HISTORY

On November 20, 2017 appellant, then a 50-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral hip osteoarthritis as a result of repetitive employment duties over the course of 18 years while in the performance of duty. He first became aware of his condition and of its relationship to factors of his federal employment on July 20, 2017. Appellant did not stop work.

In a June 6, 2017 narrative statement, appellant described his employment duties for the employing establishment over the course of 18 years since his employment began in 1999. He described his work duties in various positions he held which included walking six to eight miles per day while carrying a satchel weighing up to 35 pounds and parcels weighing up to 70 pounds, standing, bending, squatting, reaching, stooping, twisting, pivoting, lifting, pushing, pulling, going up and down hundreds of stairs and curbs per day, and getting in and out of his postal vehicle about 250 to 300 times per day. Appellant further estimated slipping, tripping, stumbling, or falling at least a dozen times each winter month. He reported that the rigorous physical activities from his employment duties caused his bilateral hip condition and arthritis.

A September 14, 2014 magnetic resonance imaging (MRI) scan of the lumbar spine was submitted which indicated mild degenerative changes.

Physical therapy notes dated September 29 through November 4, 2016 discussed plans to improve hip and lumbar flexibility and strength.

In a progress note dated February 21, 2017, Dr. David Blaustein, a Board-certified physiatrist, indicated that appellant's job involved repetitive twisting, bending, and lifting, which could contribute to his low-grade back pain with some radiation into the right lower extremity that seemed more mechanical/myofascial in nature.

An x-ray report dated March 28, 2017 demonstrated mild degenerative changes of appellant's right hip with associated joint space narrowing and similar features in the partially imaged left hip. X-ray reports dated April 19, 2017 indicated that appellant's joint spaces remained relatively stable when compared to the nonweight-bearing images from March 28, 2017, noting mild degenerative changes of both hips.

In a May 29, 2017 note, Dr. Justin W. Kung, a Board-certified radiologist, reviewed radiographs of appellant's bilateral hips taken on April 19, 2017 and noted both femoroacetabular joint space measuring 2.0 millimeters (mm) indicating moderate degenerative changes.

In a report dated July 20, 2017, Dr. George P. Whitelaw, a Board-certified orthopedic surgeon, described appellant's employment duties over the course of 18 years while working for the employing establishment. He noted review of pertinent medical records and indicated that beginning in 2014, appellant was treated for right hip pain and in September 2016, he subsequently

reported a similar left hip pain. Dr. Whitelaw diagnosed degenerative osteoarthritis of both hips with 2.0 mm of femoroacetabular compartment joint space. He opined that appellant's bilateral hip osteoarthritis was likely permanently aggravated and accelerated by his work activities which included lifting, walking and climbing on a repeated basis as a letter carrier for 18 plus years. Appellant further opined that appellant's employment duties accelerated his arthritis because of his continuous walking, stooping, squatting, lifting, and bending. Dr. Whitelaw indicated that appellant's medical records objectively supported his conclusion that the high impact loading work activities engaged by appellant contributed to the development and progression of his arthritis. He explained that appellant's work activities caused a permanent aggravation of his osteoarthritis as his loss of cartilage space was irreversible and would not regrow. Dr. Whitelaw explained that the cartilage of both hips was degraded by 2.0 mm to its prior condition and once the cartilage loss was aggravated in the biological and physical process described, the condition of the joint would never go back to any prior level of severity as it was forever and permanently deteriorated. He opined that the 18 years of physical activity from appellant's employment duties accelerated his arthritis because of the continuous walking, stooping, squatting, lifting, and bending. Dr. Whitelaw further noted that the 18 years of carrying mail hastened his osteoarthritis, which would not have progressed as early and as fast as it did. He discussed the mechanism of injury by stating that arthritis is a loss of articular cartilage surface. Dr. Whitelaw reported that impact loading resulting from repeated local stresses causes and accelerates the progression of arthritis through a process of chronic inflammation. Appellant's employment duties as a letter carrier required constant and repetitive walking, standing, squatting, stooping, climbing, bending, lifting, carrying, stair climbing, and twisting activities. These impact loading activities exerted repeated local stresses to his lower extremities and the arthritis was caused by a well-described biological/chemical process where excessive impact loading and repeated local stresses on the cartilage surface result in chronic inflammation. Dr. Whitelaw noted that the inflammation resulted in chemical changes within the cartilage, most significantly the loss of proteoglycans which was significant because proteoglycans were responsible for cartilage resilience. With less resilience, the cartilage became more susceptible to the wear and tear of the impact loading activities, which in turn resulted in an accelerated loss of articular cartilage as a result of those activities. Dr. Whitelaw noted that this process was evident in appellant's history and examination, and was evidenced by his medical records and radiology studies demonstrating the cartilage loss to which his work activities certainly contributed. He further explained that, while other factors such as age and obesity may also contribute to the arthritic process, these other factors tended to enhance, and did not detract, from the substantial contribution that repetitive impact loading activities had on the condition.

Dr. Whitelaw concluded that there was no doubt that the high impact loading work activities engaged by appellant contributed to the development and progression of his arthritis through the process described above. Appellant's medical records objectively supported this conclusion as they showed that during the time period that he was engaged in high impact loading activities, his arthritis presented and progressed. He reported that causation was established, that even if work factors were a nonexclusive, minor, and insubstantial contributor to his medical condition, the duration of and extent of his high impact loading activities definitively established the causal relationship in this case.

By development letter dated January 12, 2018, OWCP informed appellant that the evidence of record was insufficient to support his claim. It advised him of the medical and factual evidence

needed and provided him with a questionnaire for completion. OWCP afforded appellant 30 days to submit the necessary evidence. In another development letter of even date, it requested that the employing establishment provide comments pertaining to appellant's alleged occupational disease claim.

In a January 26, 2018 statement from the employing establishment, the postmaster related that appellant's daily duties included: one to two hours of standing, twisting, and bending setting up the route; six to seven hours of driving; four to five hours of walking from a vehicle to a mail box; two hours of driving up to mailboxes without exiting the vehicle by delivering to the box on the post; six to seven hours of twisting to gather mail for delivery at each address; and four to five hours of walking up and down stairs (approximately 800 to 900 stairs). She did not believe that appellant walked six to eight miles a day as he only had to walk from the vehicle to the mailbox for four to five hours per day. The postmaster noted that appellant had in the past carried a satchel weighing up to 35 pounds, but the route he had been on since December 2016 did not have a park and loop area requiring him to carry a satchel. She also noted that carriers were required to lift up to 70 pounds, which was an occasional package from the truck to the front door of the residence. The postmaster reported that appellant was required to lift trays of mail from the back of the vehicle to the front for loading, but during the course of the day, he only carried the amount of mail for one delivery at a time.

By letter dated January 31, 2018, counsel argued that Dr. Whitelaw's July 20, 2017 medical report established that appellant's bilateral hip osteoarthritis was causally related to his federal employment duties. He further noted additional evidence submitted in support of appellant's claim.

In a January 31, 2018 narrative statement, appellant responded to OWCP's questionnaire and related that he did not engage in any sports or recreational activities outside of his federal employment. He further submitted additional medical reports in support of his claim including physical therapy notes dated July 9 through September 23, 2014, x-ray reports of the lumbosacral spine dated July 17 and 24, 2014, an undated lower limb questionnaire, and progress notes dated June 12, 2014 through June 15, 2017 documenting treatment for his condition. A position description for a city carrier was also submitted.

By decision dated May 7, 2018, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that his diagnosed bilateral hip osteoarthritis condition was causally related to the accepted factors of his federal employment, which included lifting, walking, and climbing. It noted that Dr. Whitelaw's opinion was speculative as he opined that appellant's condition was likely caused or aggravated by his employment duties.

On May 16, 2018 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. A hearing was held on October 25, 2018 during which appellant testified in support of his occupational disease claim.

In an October 31, 2018 narrative statement, appellant responded to the postmaster's statement. He reported that she failed to discuss the other routes that he had been assigned for 15 years prior to changing routes in December 2016. Appellant reported that he was not solely attributing his current duties to his condition, but rather that the various employment duties he

performed over the course of 18 years cumulatively contributed to his condition. He explained that, over the span of his entire career, his routes involved around 500 deliveries per day, walking six to eight miles per day, going up and down hundreds of stairs and curbs a day, and lifting, carrying, and delivering hundreds of pounds of mail and parcels per day on foot in all kinds of weather and over all kinds of terrain. Appellant also estimated getting in and out of his vehicle approximately 250 to 300 times per day over the span of his career. He further noted that the employing establishment omitted the fact that he cased mail for one to two hours per day which involved standing on his feet the entire time, bending at the hips, knees, and back, squatting, reaching, walking, stooping, and a lot of twisting and pivoting on his feet to get the mail and parcels ready to deliver.

In a November 19, 2018 note, Dr. Whitehead responded to OWCP's May 7, 2018 decision which found that his prior report was speculative. He reported that all of his opinions from his July 20, 2017 report were based on a reasonable degree of medical certainty. Dr. Whitehead further asserted that appellant's work activities as a letter carrier aggravated and hastened his arthritis and he reconfirmed his prior opinion with the highest degree of medical confidence that appellant's employment duties caused his bilateral hip osteoarthritis.

In a statement dated November 14, 2018, the postmaster indicated that appellant had been employed at the Natick post office from 1999 until he came to the Medway post office in 2007. She noted that the Medway office was small with six routes and only one route required walking. The postmaster indicated that while employed from 2007 to 2016 in Medway, appellant was only required to deliver a route that required walking once a week, unless another carrier was on vacation or out sick. She noted that the other routes had no walking other than to dismount from the truck to the house.

By decision dated January 3, 2019, OWCP's hearing representative affirmed the May 7, 2018 decision finding that the medical evidence of record failed to establish that appellant's bilateral hip osteoarthritis was causally related to the accepted factors of his federal employment.

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,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

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *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 a claim for occupational disease, appellant's burden of proof requires submission of 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 employment factors identified by the employee.⁷

In an occupational disease claim, rationalized medical opinion evidence is required to establish causal relationship.⁸ The opinion of the physician must be based on a complete factual and medical background, 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 incident.⁹ This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of 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.¹⁰

ANALYSIS

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

In medical reports dated July 20, 2017 and November 19, 2018, Dr. Whitelaw opined that appellant's employment duties as a letter carrier over the course of 18 years contributed to and accelerated his bilateral hip osteoarthritis. He discussed appellant's medical history, reviewed diagnostic reports, provided findings on physical examination, and explained how appellant's employment factors physiologically caused his bilateral hip osteoarthritis.

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *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).

⁷ *C.M.*, Docket No. 19-0264 (issued December 19, 2019); see *Roy L. Humphrey*, 57 ECAB 238, 241 (2005). *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁸ See 20 C.F.R. § 10.110(a); *M.M.*, Docket No. 18-1366 (issued February 27, 2019); *John M. Tornello*, 35 ECAB 234 (1983).

⁹ *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

¹⁰ *S.H.*, Docket No. 17-1660 (issued March 27, 2018); *James Mack*, 43 ECAB 321 (1991).

Dr. Whitelaw discussed the mechanism of injury for this occupational disease claim.¹¹ He 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 which caused mechanical stresses on the cartilage surface, resulting in chronic inflammation. This inflammation resulted in an accelerated loss of articular cartilage in the affected areas, in this case in the lower extremities. Inflammation resulted in a chemical change within the cartilage as it activated degradative enzymes which caused the loss of the proteoglycans. Dr. Whitelaw noted that this loss of proteoglycans was significant because, among other reasons, proteoglycans are responsible for cartilage resilience. He explained that loading and local stresses arising from appellant's repetitive motion activities such as knee bending, kneeling, lifting, climbing, stooping, twisting, squatting, and carrying contributed to the development and progression of appellant's accelerated loss of articular cartilage and his bilateral hip osteoarthritis. Dr. Whitelaw indicated that appellant's medical records contained objective support for causal relationship between his longstanding heavy labor work activities and his bilateral hip osteoarthritis.

In the January 3, 2019 decision, OWCP's hearing representative took issue with Dr. Whitelaw's reports noting that there was no objective evidence that the osteoarthritis had accelerated. The Board notes that appellant has provided medical reports and studies dating back to 2014 which document the progression of his condition. The Board further notes that appellant has established the described repetitive employment duties over the course of his 18-year career as he is claiming an occupational disease as a result of his employment as a letter carrier. Thus, Dr. Whitelaw had an accurate history based on a cumulative description of the various duties performed beginning in 1999 at the start of his employment.

The Board finds that the medical evidence of record is sufficient to require further development of the case record.¹² It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹³

The Board notes that Dr. Whitelaw provided an opinion based on examination findings. Additionally, his opinion is not contradicted by any substantial medical or factual evidence of record.¹⁴ The Board finds that the opinion of Dr. Whitelaw is sufficient to require further development of the medical evidence.¹⁵

¹¹ See *L.H.*, Docket No. 17-0947 (issued March 8, 2018).

¹² *C.T.*, Docket No. 16-1222 (issued March 9, 2017).

¹³ *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Phillip L. Barnes*, 55 ECAB 426 (2004).

¹⁴ *J.G.*, Docket No. 18-1484 (issued June 14, 2019); *L.R.*, Docket No. 12-0239 (issued August 17, 2012).

¹⁵ *J.W.*, Docket No. 19-1201 (issued November 8, 2019); *L.D.*, Docket No. 09-1503 (issued April 15, 2010).

The Board will remand the case for further development of the medical evidence.¹⁶ On remand OWCP should prepare a statement of accepted facts and route the case file and appellant to an appropriate Board-certified physician to obtain a rationalized opinion as to whether appellant's bilateral hip osteoarthritis is causally related to his federal employment duties, directly or through aggravation, precipitation, or acceleration.¹⁷ Following this and any other further development 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.

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: February 10, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

¹⁶ C.W., Docket No. 17-1293 (issued February 12, 2018).

¹⁷ X.V., Docket No. 18-1360 (issued April 12, 2019); P.A., Docket No. 09-0319 (issued November 23, 2009).

¹⁸ S.W., Docket No. 18-0119 (issued October 5, 2018).