

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

R.S., Appellant	)	
	)	
and	)	Docket No. 19-1939
	)	Issued: May 6, 2020
U.S. POSTAL SERVICE, POST OFFICE,	)	
Portland, ME, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 19, 2019 appellant filed a timely appeal from a May 17, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**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.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the May 17, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On December 15, 2017 appellant, then a 57-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a hip injury due to factors of his federal employment which included walking, dismounting from his postal vehicle multiple times a day, and delivering mail for the past 30 years. He related that he first became aware of his condition and first realized their relation to factors of his federal employment on December 1, 2017. Appellant further noted that he had received a diagnosis of right hip arthritis and impingement on December 14, 2017. On the reverse side of the claim form, the employing establishment indicated that he stopped work on December 13, 2017.

In an undated narrative statement received by OWCP on December 20, 2017, appellant related that on December 1, 2017 he experienced excessive right hip pain. He repeated the factors of employment alleged to have caused his hip injury and noted that using his hip all day at work for over 30 years most likely wore out his hip joint and caused it to deteriorate.

In a December 21, 2017 development letter, OWCP informed appellant that additional evidence was required in support of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested evidence.

A December 14, 2017 medical report by Dr. Brian Abbot, an osteopath Board-certified in neuromusculoskeletal medicine, noted that appellant presented with pain, weakness, and stiffness in his right hip. Appellant experienced pain with walking, squatting, and pivoting, and he walked with a limp. Dr. Abbot noted that appellant had a gradual onset of his symptoms over the past six to eight weeks and had no preceding trauma. Appellant's physical examination findings were noted. X-rays of his hip and pelvis revealed moderate degenerative arthritis with moderate loss of joint space and cam morphology. Dr. Abbot diagnosed right hip arthrosis, unilateral right hip primary osteoarthritis, and cam morphology. He provided appellant with a hip injection and indicated that appellant should not return to work for a week.

In a December 14, 2017 duty status report (Form CA-17), Dr. Abbot noted that appellant's soreness and pain in his right hip increased while performing his normal work duties, including delivering at least 60 parcels per day, which required him to stop and dismount from his postal vehicle. He also noted that appellant's job entailed lifting up to 45 pounds, bending/stooping, reaching above his shoulders, sitting, standing, walking, twisting, simple grasping, fine manipulation, and driving a vehicle. Dr. Abbot diagnosed degenerative joint disease and impingement of the right hip, which he noted in the "diagnosis due to injury" section. He indicated that appellant should not return to work for a week, and advised that when appellant did return he should only perform sedentary work.

A December 22, 2017 report by Dr. Abbot indicated that appellant's symptoms remained unchanged. He repeated appellant's diagnoses from his previous report and indicated that appellant should remain off of work. A December 22, 2017 work capacity evaluation (Form OWCP-5c) report signed by Dr. Abbot repeated appellant's diagnoses and indicated that appellant could not return to work. A December 22, 2017 duty status report (Form CA-17) signed by him indicated that appellant was injured during November 2017 due to repetitive activity, including

delivering at least 60 parcels per day. Dr. Abbot repeated appellant's employment factors listed in the previous duty status report, diagnosed appellant hip arthrosis and impingement, which he noted in the "diagnosis due to injury" section, and advised appellant not to return to work.

On December 27, 2017 appellant completed OWCP's development questionnaire. He argued that the long-term effects of the repetitive motion from a combination of all his performance and physical work functions listed in the submitted duty status reports, which he performed for at least 5 days a week for the past 30 years, likely caused his hip injury.

By decision dated January 23, 2018, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted factors of his federal employment.

On February 12, 2018 appellant requested reconsideration. In an attached statement he related that he was submitting a new medical report from Dr. Abbot which explained that the nature of appellant's federal employment would aggravate his diagnosed right hip conditions, and therefore he had proven causal relationship and established his claim.

A January 30, 2018 medical report from Dr. Abbot indicated that appellant's symptoms remained unchanged. He noted that a magnetic resonance imaging (MRI) scan of appellant's hips revealed a moderate diffuse edema within the right femoral neck and right femoral epiphysis, bilateral hip osteoarthritis, a right hip joint effusion, and a differential diagnosis of transient osteoporosis, avascular necrosis, and septic arthritis. The MRI scans were compared with appellant's computerized tomography scan from July 22, 2008. Dr. Abbot opined that it was not clear that appellant's physical work duties caused appellant's degenerative hip changes, but that the nature of his work would aggravate this component of his hip pain. He further opined that appellant's work duties would not be responsible for the transient osteoporosis *versus* the avascular necrosis. Dr. Abbot aspirated appellant's hip with ultrasound guidance. He advised that appellant could return to work with the restrictions of weight bearing as tolerated, using crutches, no squatting or heavy lifting, and engaging in sensory work only.

By decision dated March 27, 2018, OWCP denied modification of its January 23, 2018 decision.

In a March 27, 2018 duty status report (Form CA-17), Dr. Abbot diagnosed hip impingement, arthritis, and transient osteoporosis *versus* the avascular necrosis, which he noted in the "diagnosis due to injury" section. He requested that appellant be excused from parcel post duties and indicated that appellant could engage in intermittent twisting for less than an hour per day and intermittent reaching above his shoulders for eight hours per day.

On October 12, 2018 appellant requested reconsideration. In an accompanying letter, he indicated that in a newly submitted medical report Dr. Abbot opined that appellant's factors of federal employment aggravated his underlying arthrosis. Appellant further explained that the increase of door-to-door delivery required due to shipments from companies increased the amount of parcels he delivered, which aggravated his medical condition.

An August 16, 2018 medical report from Dr. Abbot indicated that appellant's symptoms had significantly improved, but appellant still experienced pain. He repeated appellant's diagnoses

of right hip pain, unilateral primary osteoarthritis, right hip arthrosis, and cam morphology. Dr. Abbot opined that the nature of appellant's work duties, including repetitive right hip abduction, bending, and lifting, aggravated his underlying arthrosis. He also repeated that appellant's employment factors were not responsible for his differential diagnoses of transient osteoporosis *versus* avascular necrosis. Dr. Abbot recommended that appellant continue with prior restrictions, but indicated that appellant could return to work on his mail route as long as he refrained from delivering parcels.

By decision dated November 27, 2018, OWCP denied modification of its March 27, 2018 decision.

On February 11, 2019 appellant requested reconsideration. In an accompanying letter, he indicated that he was submitting a medical report from Dr. Abbot which provided the medical reasoning required by OWCP, thereby proving causal relationship and establishing his claim for benefits.

In a January 24, 2019 narrative medical report, Dr. Abbot explained that hip arthritis is the loss of joint cartilage and associated bony change, and that cartilage affords smooth joint motion. He further explained that an arthritic hip does not tolerate a range of motion beyond a certain degree, and he compared appellant's range of motion with that of a normal hip joint, indicating that appellant's range was limited. Dr. Abbot also indicated that appellant had cam morphology, which meant that appellant's femoral neck did not taper, thereby limiting his range of motion and contributing to the process of joint arthritis. He noted that if appellant moved his hip beyond his range of motion, the bony elements of appellant's joints opposed each other rather than the usual opposition of smooth cartilage surfaces in a normal hip, and this limited motion and caused pain. Dr. Abbot indicated that when appellant delivered packages at work it required him to exit on the right side of a postal truck, stepping on his right leg. He stated that it was then expected that appellant would pivot to the right to go to the back of the truck, effectively internally rotating his hip. Dr. Abbot explained that these motions, when done on a repetitive basis, caused arthritic hip pain, as they typically placed the joint in positions that were at or beyond the range of motion available to his hip. He opined that therefore delivering letters and repeatedly delivering packages would exacerbate appellant's underlying hip degenerative process. Dr. Abbot indicated that appellant could continue driving a postal truck, but should refrain from squatting and lifting objects.

By decision dated May 17, 2019, OWCP denied modification of its November 27, 2018 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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

---

<sup>3</sup> *Supra* note 1.

limitation of FECA,<sup>4</sup> that an injury was sustained while 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.<sup>5</sup> 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.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant 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 identified employment factors.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>8</sup> 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 employee.<sup>9</sup> 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.<sup>10</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>11</sup>

### ANALYSIS

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

Dr. Abbot's medical reports provided a history of injury, physical examination findings, a review of diagnostic tests, and they accurately described the accepted employment factors, which

---

<sup>4</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

<sup>6</sup> *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *M.S.*, Docket No. 18-1554 (issued February 8, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>8</sup> *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>9</sup> *L.D.*, *id.*; *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>10</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

he noted that appellant had performed for 30 years. He diagnosed arthritis and hip impingement and he provided a differential diagnosis of transient osteoporosis, avascular necrosis, and septic arthritis. In his August 16, 2018 medical report, Dr. Abbot opined that the nature of appellant's work, including repetitive right hip abduction, bending, and lifting, aggravated appellant's underlying arthrosis. In his January 24, 2019 narrative medical report, he explained the mechanism of injury.<sup>12</sup> Dr. Abbot related that hip arthritis was the loss of joint cartilage and associated bony change, and noted that an arthritic hip did not tolerate a range of motion beyond a certain degree because bony elements of the joints opposed each other rather than the usual opposition of smooth cartilage surfaces. He further explained that when appellant delivered packages at work appellant exited on the right side of a postal truck, stepping on his right leg and would then pivot to the right to go to the back of the truck, effectively internally rotating his hip. Dr. Abbot opined that these motions, when done on a repetitive basis, caused arthritic hip pain, as they typically placed the joint in positions that were at or beyond the range of motion available to appellant's hip, and he concluded that therefore delivering letters and repeatedly delivering packages would exacerbate appellant's underlying hip degenerative process.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation; however, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>13</sup>

The Board finds that, although Dr. Abbot's reports are insufficiently rationalized to meet appellant's burden of proof to establish his claim, they are relevant evidence in support of appellant's claim, as they explain the physiological process by which appellant's accepted factors of federal employment could have resulted in the aggravation of appellant's right hip arthritis. Dr. Abbot's medical reports raise an uncontroverted inference of causal relation between appellant's claimed right hip condition and the accepted factors of his federal employment. Further, development of appellant's claim is therefore required.<sup>14</sup>

On remand, OWCP shall prepare a statement of accepted facts concerning appellant's employment factors and refer him to an appropriate second opinion physician to determine whether appellant's accepted employment factors either caused or aggravated his right hip condition.<sup>15</sup> After this and other such further development deemed necessary, it shall issue a *de novo* decision.

### **CONCLUSION**

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

---

<sup>12</sup> *E.S.*, Docket No. 18-1312 (issued April 3, 2020); *see also William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>13</sup> *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

<sup>14</sup> *See K.T.*, Docket No 19-1436 (issued February 21, 2020).

<sup>15</sup> *See supra* note 11.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 17, 2019 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: May 6, 2020  
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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