

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

S.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
West Roxbury, MA, Employer**

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**Docket No. 20-0675
Issued: November 23, 2020**

Appearances:

*John L. DeGeneres, Jr., 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 5, 2020 appellant, through counsel, filed a timely appeal from a November 20, 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 to consider 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 that the acceptance of his claim should be expanded to include a permanent aggravation of preexisting degenerative osteoarthritis as causally related to his accepted employment injury.

FACTUAL HISTORY

On September 5, 2014 appellant, then a 52-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that factors of his federal employment on or before June 26, 2014, had aggravated preexisting right hip osteoarthritis. He submitted a statement dated April 24, 2014, describing his duties as a letter carrier beginning in April 1988, including repetitive lifting, stair climbing, stooping, bending, and prolonged walking. Appellant noted the onset of right hip discomfort in early 2013.

In reports dated from March 28 through September 6, 2013, Dr. Mark Haffenreffer, a Board-certified orthopedic surgeon, noted appellant's worsening right hip and groin pain for the past several years. He diagnosed degenerative right hip arthritis.³ In a December 19, 2013 report, Dr. Haffenreffer diagnosed end-stage osteoarthritis of the right hip with complete cartilage loss. He performed a total right hip arthroplasty on January 6, 2014. In the operative note, Dr. Haffenreffer commented that appellant had a high acetabular index.

In a report dated August 20, 2014, Dr. Byron Hartunian, a Board-certified orthopedic surgeon, noted appellant's account of his work duties as a letter carrier and reviewed medical records. On examination, he noted limited right hip motion. Dr. Hartunian diagnosed status post total right hip arthroplasty for end-stage degenerative arthritis. He found that appellant had attained maximum medical improvement (MMI) on February 18, 2014. Dr. Hartunian opined that repetitive loading activities and severe local stresses such as "repeated knee bending, kneeling, lifting, climbing, stooping, twisting, squatting, and carrying" in the performance of duty caused chronic inflammation that accelerated articular cartilage loss, contributing to the acceleration of appellant's right hip osteoarthritis.

In a development letter dated October 31, 2014, OWCP notified appellant of the factual deficiencies of his claim. It advised him of the type of evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a statement dated November 18, 2014, J.S., appellant's supervisor, confirmed that the physical requirements of appellant's position included carrying a mail satchel weighing up to 35 pounds, standing one to two hours a day, and walking up to seven miles a day.

On May 20, 2015 OWCP referred appellant, the medical record, and a statement of accepted facts (SOAF) to Dr. Christopher B. Geary, a Board-certified orthopedic surgeon, for a

³ A March 7, 2013 magnetic resonance imaging (MRI) scan of the right hip demonstrated a full-thickness articular cartilage loss of the right femoral head and acetabulum with subchondral cystic change. May 31, 2013 right hip x-rays demonstrated severe osteoarthritis of the right hip.

second opinion regarding whether there was a causal relationship between the identified employment factors and the claimed right hip condition. Dr. Geary provided a June 30, 2015 report, in which he reviewed the medical record and SOAF. On examination of the right hip, he observed flexion at 105 degrees, external rotation at 45 degrees, and internal rotation at 5 degrees. Dr. Hartunian opined that appellant's work activities had caused a temporary aggravation of preexisting degenerative osteoarthritis of the right hip. He noted that while the right hip arthroplasty was "reasonable and necessary," it was unrelated to appellant's federal employment.

By decision dated July 13, 2015, OWCP accepted appellant's occupational disease claim for a temporary aggravation of right hip osteoarthritis, based on Dr. Geary's opinion as the weight of the medical evidence.

On August 11, 2015 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. During the hearing, conducted on January 26, 2016, appellant contended that he had sustained a permanent aggravation of right hip osteoarthritis.

By decision dated March 31, 2016, OWCP's hearing representative set aside the July 13, 2015 decision and remanded the case to obtain a supplemental opinion from Dr. Geary on the issue of causal relationship.

On remand Dr. Geary provided an August 12, 2016 supplemental report, in which he opined that employment factors had caused a temporary aggravation of preexisting right hip osteoarthritis, which would have resolved immediately upon appellant's "removal from the employment environment." He referenced Dr. Haffenreffer's observation of a high acetabular index as an indication that appellant's anatomy contributed to the development of right hip osteoarthritis.

OWCP then found a conflict of medical opinion between Dr. Hartunian, for appellant, and Dr. Geary, for the government, regarding causal relationship. It referred appellant and the case record, including a March 25, 2015 SOAF, to Dr. John H. Chaglassian, a Board-certified orthopedic surgeon, as an impartial medical examiner.

In a July 17, 2017 report, Dr. Chaglassian listed medical reports reviewed and provided a history of injury and treatment. On examination he noted a level pelvis, normal gait, 100 degrees right hip flexion, 0 degrees extension, 45 degrees external rotation, 5 degrees internal rotation, and a one-centimeter leg length discrepancy. Dr. Chaglassian opined that appellant "would have temporary aggravation of the right hip osteoarthritis by his work-related activities."

By decision dated August 9, 2017, OWCP denied appellant's claim for a permanent aggravation of right hip osteoarthritis. It accorded Dr. Chaglassian the special weight of the medical evidence.

On August 16, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated December 8, 2017, an OWCP hearing representative set aside the August 9, 2017 decision, following a preliminary review. He found that Dr. Chaglassian had not

discussed the significance of clinical and diagnostic findings of record, indicated why he disagreed with appellant's treating physicians, or explained how the medical record supported his opinion. The hearing representative further found that Dr. Chaglassian had not addressed which job duties had in any way contributed to the development of the underlying condition. He remanded the claim to obtain a supplemental opinion from Dr. Chaglassian addressing these issues, as well as whether the January 6, 2014 right hip arthroplasty, should be retroactively approved as treatment for an accepted injury.

On remand Dr. Chaglassian provided a January 9, 2018 supplemental independent medical examination report, in which he characterized arthritis as a progressive condition that could not be influenced by physical factors other than a discrete traumatic injury. He contended that Dr. Hartunian's support for causal relationship was speculative, as "qualified Board-certified orthopedic surgeons" would not have opined that walking, carrying mail, and getting in and out of delivery vehicles would cause osteoarthritis. Dr. Chaglassian noted that Dr. Haffenreffer's reference to a high acetabular index indicated that appellant's anatomy contributed to the underlying degenerative condition. He concluded that the right hip arthroplasty was necessitated by appellant's underlying osteoarthritis, unrelated to the accepted work factors.

By decision dated January 25, 2018, OWCP denied appellant's claim for expansion of the acceptance of the claim to include a permanent aggravation of right hip osteoarthritis, based on Dr. Chaglassian's opinion as the special weight of the medical evidence.

On February 1, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, held on July 19, 2018. During the hearing, counsel contended that Dr. Chaglassian's opinion was insufficiently rationalized to represent the special weight of the medical evidence. He submitted additional evidence.

In a June 25, 2015 report, Dr. Barry W. Levine, a Board-certified pulmonologist, opined that carrying a heavy mail satchel and climbing stairs at work over a 27-year career "caused degeneration of the right hip" and severe pain necessitating complete hip replacement.

In a July 16, 2018 report, Dr. Hartunian opined that prolonged walking, stair climbing, and carrying a mail satchel while at work caused a permanent aggravation of right hip osteoarthritis. He explained that employment factors caused a permanent loss of cartilage as arthritis did not revert to baseline after an acceleration or aggravation.

By decision dated September 25, 2018, OWCP's hearing representative affirmed OWCP's January 25, 2018 decision. She accorded Dr. Chaglassian the special weight of the medical evidence.

On August 22, 2019 appellant, through counsel, requested reconsideration. He contended that Dr. Chaglassian's reports were insufficiently rationalized to be accorded the special weight of the medical evidence. Counsel submitted additional evidence.

In an August 15, 2019 report, Dr. Hartunian explained that appellant's high acetabular index made him more susceptible to degenerative arthritis from high impact loading activities. He opined that appellant's work activities contributed to the development of degenerative osteoarthritis of the right hip.

In an August 22, 2019 statement, appellant estimated that during his 31-year career at the employing establishment he had walked approximately 35,000 miles, climbed 15 million steps, stood for 465 days, and had climbed in and out of his vehicle millions of times.

Counsel also submitted copies of reports by Dr. Chaglassian from other cases before OWCP.

By decision dated November 20, 2019, OWCP denied modification, finding that the medical evidence of record was insufficient to establish causal relationship. It accorded Dr. Chaglassian the special weight of the medical evidence.

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.⁴

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁵ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.⁶ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁷

Section 8123(a) of FECA provides in pertinent part: "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."⁸ In situations where 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 resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁹

The Federal (FECA) Procedure Manual provides that the findings of an OWCP referral physician or impartial medical specialist must be based on the factual underpinnings of the claim,

⁴ See *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁷ *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ 5 U.S.C. § 8123(a).

⁹ *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).

as set forth in the SOAF.¹⁰ When OWCP's referral physician or impartial medical specialist does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is diminished or negated altogether.¹¹

ANALYSIS

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

OWCP properly determined that there was a conflict in the medical opinion evidence between Dr. Hartunian, an attending physician, and Dr. Geary, an OWCP referral physician, on the issue of causal relationship. In order to resolve the conflict, pursuant to 5 U.S.C. § 8123(a), OWCP referred appellant, the medical record, and a SOAF to Dr. Chaglassian for an impartial medical examination and an opinion on the matter.

Dr. Chaglassian provided a July 17, 2017 report, in which he opined that employment factors had caused a temporary aggravation of right hip osteoarthritis. OWCP denied appellant's claim for a permanent aggravation of right hip osteoarthritis based on Dr. Chaglassian's opinion as the special weight of the medical evidence. Pursuant to appellant's request for a hearing, by decision issued December 8, 2017, an OWCP hearing representative remanded the case to obtain a supplemental report from Dr. Chaglassian addressing whether the accepted employment factors had in any way contributed to the development of the underlying right hip osteoarthritis. In response, Dr. Chaglassian submitted a January 9, 2018 supplemental report in which he opined that osteoarthritis was a progressive condition unrelated to physical influences other than a discrete traumatic injury. He concluded that the accepted work factors had no impact on the development of appellant's right hip osteoarthritis. Dr. Chaglassian reiterated his opinion that a permanent aggravation of osteoarthritis could not be influenced by external factors other than traumatic injury, but he did not acknowledge or explain OWCP's prior acceptance of a temporary aggravation of the osteoarthritis. The Board finds that given Dr. Chaglassian's failure to acknowledge OWCP's prior determination, as set forth in the SOAF, that the accepted employment factors caused a temporary aggravation of the osteoarthritic condition, his opinion is found to be of diminished probative value regarding causal relationship and is thus insufficient to carry the special weight as an impartial medical specialist.

Therefore, in order to resolve the conflict in the medical opinion evidence, the case will be remanded to OWCP for referral of the case record, including a SOAF and appellant, to a new impartial medical specialist for examination and for a rationalized medical opinion, which evaluates whether the acceptance of his claim should be expanded to include a permanent aggravation of preexisting degenerative osteoarthritis as causally related to his accepted

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.810.11a (September 2019).

¹¹ *Id.* at Chapter 3.600.3(10) (October 1990).

employment injury. After this and other such further development as OWCP deems necessary, it 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 November 20, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: November 23, 2020
Washington, DC

Christopher J. Godfrey, Deputy 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