

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

A.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chelsea, MA, Employer**

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**Docket No. 20-0803
Issued: November 4, 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:

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

JURISDICTION

On February 28, 2020 appellant, through counsel, filed a timely appeal from a February 20, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the Federal Employees' Compensation Act³ (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 Appellant timely requested oral argument pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). By order dated October 30, 2020, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed in a decision based on the case record. *Order Denying Request for Oral Argument*, Docket No. 20-0803 (issued October 30, 2020).

³ 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On November 2, 2017 appellant, then a 51-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed right hip osteoarthritis due to factors of his federal employment. He indicated that he first became aware of his condition and its relationship to his federal employment on May 8, 2017. Appellant did not stop work.

In his April 3, 2017 narrative statement, appellant noted that he had worked at the employing establishment for 24 years and performed walking routes of 10 miles a day carrying mail satchels weighing up to 35 pounds and parcels weighing up to 70 pounds. He also had driving routes which required him to exit and enter his vehicle approximately 200 times a day. Appellant alleged that his job was very physical and that in the winter months he frequently slipped, tripped, or fell.

On November 20, 2014 Dr. Kevin L. Riemer, a podiatrist, examined appellant due to a severe reduction of motion at the first metatarsophalangeal joint of his right foot. He explained the consequences of first metatarsal joint fusion. Appellant underwent right foot x-rays on December 3, 2014. On February 6 and 18, 2015 Dr. Riemer examined appellant due to severe hallux rigidus of his right foot and reviewed x-rays. Appellant underwent fusion of the first metatarsophalangeal joint on the right on February 20, 2015. On February 27 and March 5, 2015 Dr. Riemer examined appellant following his metatarsal joint fusion. In March 18 and 24, 2015 notes, he found appellant's incision was well healed.

On June 28, 2016 Dr. Jerina Gani, a Board-certified internist, found that appellant had mild-to-moderate arthritis of his shoulder and mild arthritis of the right hip.

In a July 15, 2016 note, Dr. Justin W. Kung, a Board-certified radiologist, reviewed appellant's June 24, 2016 bilateral hip x-rays and found mild degenerative changes in the right femoroacetabular joint space.

On May 8, 2017 Dr. Byron V. Hartunian, a Board-certified orthopedic surgeon, examined appellant due to arthritis of the right hip and right great toe. He described appellant's work duties of walking 10 miles a day while carrying a 35-pound mailbag. Dr. Hartunian also noted that appellant was required to lift packages weighing up to 70 pounds and climb in and out of his delivery vehicle. Appellant first developed right toe pain in 2008 and underwent fusion in February 2015. He had experienced right hip pain for five years and underwent x-rays in June 2016. Dr. Hartunian found no palpable tenderness in the right hip and provided appellant's range of motion. He diagnosed right hip arthritis and first metatarsophalangeal arthrodesis of the right great toe. Dr. Hartunian opined that appellant had degenerative osteoarthritis of his right hip which was most likely permanently aggravated by his work activities including lifting, walking, and climbing. He further found that appellant's position as a letter carrier over a long career can and did accelerate arthritis because of the continuous walking, stooping, squatting, stair climbing

and descending. Dr. Hartunian found that appellant's employment activities over a period of 24 plus years had hastened his osteoarthritis. He noted that arthritis was a loss of articular cartilage surface and that impact loading resulting from repeated local stresses caused and accelerated the progression of arthritis through a process of chronic inflammation. Dr. Hartunian reported that the inflammation resulted in chemical change within the cartilage resulting in less resilience and rendering it more susceptible to the wear and tear of impact-loading activities, which in turn resulted in an accelerated loss of articular cartilage which had happened to appellant. He opined that appellant's "work activities caused a permanent aggravation of his right hip osteoarthritis, which was a permanent and irreversible alteration of his joint space." Dr. Hartunian concluded that there was no doubt that the high-impact loading work activities that appellant engaged in contributed to the development and progression of his right hip arthritis.

In a January 12, 2018 development letter, OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical evidence from appellant and provided a questionnaire for his completion. OWCP afforded him 30 days to respond.

On February 7, 2018 appellant responded to OWCP's questionnaire and reported pain and stiffness in his right hip for the past six years.

In an October 1, 2012 note, Dr. Gani examined appellant due to low back pain with radiation down his right lower leg. On June 24, 2016 she described his right shoulder and hip pain. Dr. Gani noted that appellant carried a heavy bag on his right shoulder and walked frequently at work. Appellant underwent hip x-rays on June 24, 2016 which demonstrated mild degenerative changes involving the right hip with the left hip appearing more normal. Dr. Gani examined him on January 11 and 25, 2017 due to low back pain. Appellant underwent lumbar spine x-rays on January 11, 2017. In a June 26, 2017 note, Dr. Gani reported appellant's low back pain and right hip pain.

By decision dated April 24, 2018, OWCP denied appellant's occupational disease claim finding that he had not established a causal relationship between his right hip condition and his employment duties. It noted that he had not provided his complete medical records regarding his right hip condition. OWCP further found that Dr. Hartunian's opinion was speculative as he found that appellant's condition was most likely aggravated by his employment duties.

On May 3, 2018 appellant requested an oral hearing from an OWCP hearing representative.

In a September 27, 2018 report, Dr. Hartunian found that appellant's employment duties contributed to his right toe and right hip osteoarthritis. He indicated that his opinions regarding appellant's medical conditions were offered at a reasonable degree of medical certainty.

Counsel appeared before an OWCP hearing representative on October 25, 2018 and contended that appellant had submitted sufficient medical opinion evidence to require further development by OWCP.

By decision dated January 3, 2019, OWCP's hearing representative affirmed the April 24, 2018 OWCP decision.

On November 20, 2019 appellant, through counsel, requested reconsideration of the January 3, 2019 decision. Counsel again contended that the evidence submitted was sufficient to require further development of the claim by OWCP.

In a November 12, 2019 report, Dr. Hartunian found that appellant had developed bilateral hip arthritis. He based this conclusion on the July 15, 2016 x-ray report. Dr. Hartunian found that appellant's left hip arthritis was only 0.5 millimeters different from his right. He disputed that there was a singular natural progression of arthritis and opined that appellant had an aggravated and accelerated progression of osteoarthritis due to the hip joints being subjected to the continuous impact loading activities of his job duties. Dr. Hartunian opined that in this instance, the natural progression was an aggravated and accelerated progression of the osteoarthritis due to the hip joints being subjected to the continuous impact loading activities of the appellant's job duties.

By decision dated February 20, 2020, OWCP denied modification of its prior decisions.⁴

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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,⁶ 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 to the employment injury.⁷ 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.⁸

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

⁴ The Board notes that OWCP has not issued a final decision regarding any relationship between appellant's right toe condition and his federal employment in this claim file. Therefore, the Board will not consider this issue on appeal. 20 C.F.R. § 501.2(c).

⁵ *Supra* note 3.

⁶ *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ 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. Elliott*, 41 ECAB 992 (1990).

condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ 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.¹¹ 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.¹²

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.¹³

ANALYSIS

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

In his report dated May 8, 2017, Dr. Hartunian opined that appellant had right hip osteoarthritis that was permanently aggravated by his work activities including walking, lifting, and climbing. He opined that appellant's position as a letter carrier over a long career can and did accelerate arthritis because of the continuous walking, stooping, squatting, and climbing and descending stairs. Dr. Hartunian found that appellant's employment activities had hastened his osteoarthritis. He noted that arthritis was a loss of articular cartilage surface and that impact loading resulting from repeated local stresses caused and accelerated the progression of arthritis through a process of chronic inflammation. Dr. Hartunian reported that the inflammation resulted in chemical change within the cartilage resulting in less resilience and rendering it more susceptible to the wear and tear of impact-loading activities, which in turn resulted in an accelerated loss or articular cartilage which had happened to appellant. He opined that "work activities caused a permanent aggravation of his right hip osteoarthritis, which was a permanent and irreversible alteration of his joint space." Dr. Hartunian concluded that there was no doubt that the high-impact

⁹ *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).

¹⁰ *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹² *E.W.*, *supra* note 6; *Gary L. Fowler*, 45 ECAB 365 (1994).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

loading work activities that appellant engaged in contributed to the development and progression of his right hip arthritis.

In his November 12, 2019 report, Dr. Hartunian opined that in this instance, the natural progression was an aggravated and accelerated progression of the osteoarthritis due to the hip joints being subjected to the continuous impact loading activities of the appellant's job duties.

The Board finds that these reports from Dr. Hartunian are sufficient to require further development of the medical evidence. Dr. Hartunian is a Board-certified physician in orthopedics who is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship and he provided a comprehensive understanding of the medical record and case history. His reports provide a pathophysiological explanation as to how excessive walking, lifting, climbing and descending at work resulted in appellant's diagnosed right hip osteoarthritis. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹⁴ Accordingly, Dr. Hartunian's medical opinion is well-rationalized and logical and is therefore sufficient to require further development of appellant's claim.¹⁵

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁶ OWCP has an obligation to see that justice is done.¹⁷

On remand OWCP shall refer appellant, a statement of accepted facts, and the medical record to a specialist in the appropriate field of medicine. The chosen physician shall provide a rationalized opinion as to whether the diagnosed hip condition is causally related to the accepted factors of appellant's federal employment. If the physician opines that the diagnosed condition is not causally related, he or she must explain, with rationale, how or why the opinion differs from that of Dr. Hartunian. Following this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

CONCLUSION

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

¹⁴ *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).

¹⁵ *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁶ *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁷ *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2020 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: November 4, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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