

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

T.P., Appellant)	
)	
and)	Docket No. 19-1568
)	Issued: October 30, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
West Haven, CT, Employer)	
)	

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
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On July 17, 2019 appellant, through counsel, filed a timely appeal from a January 25, 2019 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 before the Board. By order dated May 18, 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. 19-1568 (issued May 18, 2020).

³ 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On April 25, 2016 appellant, then a 56-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she required a hip replacement causally related to factors of her federal employment. She indicated that she became aware of her condition on June 2, 2016 and attributed it to her federal employment on June 14, 2014.

In a report dated April 21, 2016, Dr. Michael P. Leslie, an osteopath and Board-certified orthopedic surgeon, advised that he had evaluated appellant on February 2, 2016 and diagnosed end stage degenerative disease of the left hip. He discussed her history of working for the employing establishment and of an accident 10 years prior where she underwent a lumbar spine procedure. Dr. Leslie opined that appellant's left hip pain and arthritis was "the result of the accident itself along with working as a letter carrier." He recommended a total hip joint replacement.

In an April 25, 2016 statement, appellant described her employment duties as a letter carrier for 28 years. She related that she had experienced left hip pain beginning in April 2014 that she initially believed had been caused by a back injury. Appellant underwent surgery for her back in July 2015, but the left hip pain continued. She attributed her left hip condition to walking, lifting, and bending. Appellant asserted that she had no history of a prior hip injury.

On June 1, 2016 Dr. Leslie advised that he was treating appellant for advanced degenerative joint disease of the left hip. He noted that she had not experienced hip pain prior to a 2004 accident at work. Dr. Leslie opined that appellant's extensive walking as a letter carrier had aggravated an "underlying predisposition to arthritis of the hip" and necessitated a total hip replacement. He opined that her predisposition to a hip injury arose due to either her prior employment injury or from an aggravation of an underlying condition. Dr. Leslie related that "[e]ither way there is evidence that the relationship of this advanced degenerative disease is to her occupation."

In a development letter dated June 20, 2016, OWCP notified appellant of the type of evidence needed to establish her occupational disease claim, including a detailed description of any repetitive activities performed outside of her employment and medical evidence explaining how the identified work activities resulted in a diagnosed medical condition. It attached a questionnaire for her completion. By separate letter of even date, OWCP also requested additional information from the employing establishment. It afforded both parties 30 days to respond.

Appellant, in a June 27, 2016 response, advised that she engaged only in necessary home activities and did not walk or jog.

By decision dated August 1, 2016, OWCP denied appellant's occupational disease claim. It found that the evidence of record was insufficient to establish a medical condition causally related to the accepted factors of her federal employment.

On July 18, 2017 appellant, through counsel, requested reconsideration. He contended that Dr. Minotti's July 13, 2017 report was sufficient to establish that her employment contributed to her left hip arthritis.

In support of his request for reconsideration, appellant submitted additional evidence, including a report dated July 21, 2016 from Dr. Philip A. Minotti, a Board-certified orthopedic surgeon. Dr. Minotti evaluated her for left hip pain that had progressively worsened for the past three years. He diagnosed degenerative joint disease of the left hip, noting that x-rays revealed severe degeneration, joint space narrowing, osteophyte formation, and subchondral sclerosis.

On August 22, 2016 Dr. Minotti performed a left total hip replacement.⁴ In reports dated September 2016 through August 2017, he described appellant's progress subsequent to the surgery.

In a June 7, 2017 statement, appellant set forth her employment duties, which included repetitively casing mail, walking, carrying satchels and parcels, and climbing steps.

In a report dated July 13, 2017, Dr. Minotti discussed appellant's history of a total hip replacement on August 22, 2016 due to degenerative joint disease of the left hip. He noted that she had worked for years as a letter carrier performing "physically demanding routes." Dr. Minotti related that repetitive employment activities "can certainly contribute to development of severely symptomatic disease sooner than it might otherwise had occurred. Clearly, [appellant's] work is not the sole cause of her left hip degenerative joint disease, but, in my opinion, it clearly contributed to her rapid development of symptoms and advanced disease."

By decision dated November 24, 2017, OWCP denied modification of its August 1, 2016 decision. It found that the medical evidence of record was insufficient to establish to explain how factors of appellant's federal employment caused her hip condition as opposed to the natural progression of the condition.

In a report dated October 28, 2018, Dr. Byron V. Hartunian, an orthopedic surgeon, reviewed appellant's work history and employment duties and discussed her current complaints of pain, stiffness, and loss of motion in the left hip, left knee, and left foot. He provided examination findings and diagnosed status post left total hip replacement for end-stage degenerative arthritis, left knee joint arthritis, and first metatarsophalangeal foot arthritis. Answering a series of specific questions, Dr. Hartunian opined that appellant's employment duties, including climbing, lifting, and walking repetitively, had permanently aggravated her left hip, foot, and knee conditions. He found that working as a letter carrier over a long period "can and does accelerate arthritis because of the continuous walking, stooping, squatting, stair climbing/descending and the like involved." Dr. Hartunian asserted that such impact-loading activities had stressed appellant's lower extremities and aggravated her arthritis. He indicated that arthritis occurred due to chronic

⁴ On August 28, 2016 appellant sought treatment at the emergency department for a rash at the surgical site.

inflammation caused by repeated local stress on cartilage surfaces. Dr. Hartunian related, “With less resilience, the cartilage becomes more susceptible to wear and tear of the impact-loading activities, which in turn results in an accelerated loss of articular cartilage as a result of those activities. This is what happened to [appellant] as documented in her medical records.” Dr. Hartunian indicated that it was impossible to say what the natural progression of her osteoarthritis would have been as current research attributed the condition to environmental factors rather than aging. He advised that work factors had contributed to appellant’s progressive hip and knee arthritis as it had occurred while she was performing high impact-loading activities over an extended duration. Dr. Hartunian found that, at a minimum, her employment duties had contributed to the development of her right hip and knee arthritis.⁵

By decision dated January 25, 2019, OWCP denied modification of its November 24, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation period of FECA,⁷ 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.⁸ 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.⁹

In an occupational disease claim, 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.¹⁰

⁵ Dr. Hartunian indicated that appellant had sustained right rather than left hip and knee arthritis; however, it appears that this is a typographical error.

⁶ *Supra* note 3.

⁷ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ *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).

¹⁰ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.¹¹ 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.¹²

ANALYSIS

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

In a report dated October 28, 2018, Dr. Hartunian discussed appellant's employment injury and reviewed her work duties. He diagnosed end-stage degenerative left hip arthritis treated with a left hip replacement, left knee arthritis, and arthritis at the first metatarsophalangeal joint of the left foot. Dr. Hartunian opined that appellant's repetitive employment duties, including climbing, lifting, squatting, bending, stair climbing, and walking, had permanently aggravated her left hip, foot, and knee arthritis. He found that impact-loading activities that she had performed working as a letter carrier over an extended period had aggravated her arthritis due to the stress on her lower extremities. Dr. Hartunian explained that repeated stress on cartilage surfaces had caused chronic inflammation, accelerating cartilage loss.

The Board finds that this report from Dr. Hartunian is sufficient to require further development of the medical evidence. Dr. Hartunian provided a proper factual and medical history and evidenced an understanding of appellant's employment duties. He explained physiologically how lifting, walking, stooping, squatting, and stair climbing at work had aggravated her left hip arthritis. The Board has 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.¹³ Dr. Hartunian's opinion, while insufficiently reasoned to meet appellant's burden of proof, provides medical rationale explaining how the accepted employment factors aggravated the claimed diagnosed condition and, thus, raises an uncontroverted inference of causal relationship sufficient to require further development of appellant's claim.¹⁴

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.¹⁵ OWCP has an obligation to see that justice is

¹¹ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

¹² *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

¹³ *B.C.*, Docket No. 20-0498 (issued August 27, 2020); *S.M.*, Docket No. 19-1634 (issued August 25, 2020); *W.M.*, Docket No. 17-1244 (issued November 7, 2017).

¹⁴ *See A.S.*, Docket No. 19-1432 (issued August 5, 2020); *C.H.*, Docket No. 20-0440 (issued August 3, 2020).

¹⁵ *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219 (1999).

done.¹⁶ The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.¹⁷

The case will therefore be remanded to OWCP for further development of the medical evidence. On remand OWCP shall refer appellant to an appropriate medical specialist for an opinion regarding whether her claimed condition of left hip arthritis is causally related to the accepted factors of her federal employment. Following this and such other further development as 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 January 25, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: October 30, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁶ See *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁷ 20 C.F.R. § 10.121.