

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

S.P., Appellant)	
)	
and)	Docket No. 20-0332
)	Issued: October 20, 2020
U.S. POSTAL SERVICE, POST OFFICE, Needham, MA, 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:

CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 27, 2019 appellant, through counsel, filed a timely appeal from a July 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. 20 C.F.R. § 501.5(b). By order dated October 14, 2020, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 20-0332 (issued October 14, 2020).

³ 5 U.S.C. § 8101 *et seq.*

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 March 29, 2017 appellant, then a 60-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral hip osteoarthritis due to factors of his federal employment. He indicated that he first became aware of his condition and its relation to his federal employment on February 10, 2017. Appellant retired on May 31, 2017.

In support of his claim, appellant submitted a statement dated January 18, 2017, wherein he described making 175 to 300 deliveries a day, climbing and descending several hundred steps, mounting and dismounting his truck several hundred times a day, and carrying over 30 pounds during his 29 years as a full-time letter carrier. He further indicated that, due to his arthritis and surgeries, work accommodations were provided over the last two years allowing him to complete his route in a truck.

Appellant was treated by Dr. Anthony Webber, a Board-certified orthopedist, on June 4, 2015 for bilateral hip pain. He reported working as a letter carrier and walking six to seven miles a day. Dr. Webber diagnosed arthritis in the hips and opined that appellant's hip condition was exacerbated by walking long distances and carrying mail. An x-ray of the hips and pelvis completed that same day revealed mild-to-moderate osteoarthritis of the right hip and mild arthritis of the left hip.

On November 2, 2016 Dr. Justin W. Kung, a Board-certified radiologist, reviewed x-rays of his hips, dated June 4, 2015, which revealed moderate degenerative change in the right and mild degenerative change in the left femoroacetabular joint.

In a report dated March 11, 2017, Dr. Byron V. Hartunian, an orthopedic surgeon specializing in sports medicine, noted treating appellant for arthritis of the hips. He indicated that appellant's work required repetitive walking, bending, squatting, stooping, twisting, lifting, climbing, and reaching activities while carrying a mail satchel. Dr. Hartunian diagnosed right hip arthritis with two-millimeter cartilage interval at femoral-acetabular joint and left hip arthritis with three-millimeter cartilage interval at femoral-acetabular joint.

On April 11, 2017 the employing establishment submitted an April 7, 2017 letter in which it controverted appellant's claim, asserting that there was a significant lapse in time from when he first sought treatment for his condition on June 4, 2015 and February 10, 2017, the date he indicated that he first realized his condition was work related.

In a development letter dated May 26, 2017, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate letter of even date, OWCP also requested additional information from the employing establishment. It afforded both parties 30 days to respond.

In a June 9, 2017 response to the development questionnaire, appellant reported being told by Dr. Hartunian that his work activities contributed to his arthritis. He noted that he did not perform strenuous duties outside of work and that he had retired on May 31, 2017. Appellant also noted that his medical history was significant for right knee replacement in 2004, left knee replacement in 2006, and a second right knee replacement in December 2009.

Dr. Hartunian provided appellant's surgical history in a June 9, 2017 report and diagnosed bilateral hip arthritis, status post right total knee replacement with revision, and left total knee replacement due to degenerative arthritis. He advised that appellant had degenerative osteoarthritis of both hips, which was likely aggravated by his work duties including lifting, walking, and climbing which he performed on a repeated basis as a letter carrier. Dr. Hartunian concluded that the job of a letter carrier over a 30-year career can and does accelerate arthritis because of the continuous walking, stooping, and squatting. He was asked by appellant's counsel to provide a "medical/biological/chemical explanation" in support of his opinion on causal relationship. Dr. Hartunian explained that it is the impact loading resulting from repeated local stresses that causes and accelerates the progression of arthritis through a process of chronic inflammation and that jobs, such as a letter carrier, require constant physical activities which exert repeated local stresses to his lower extremities. He further explained that arthritis is caused by a well-described biological/chemical process where excessive impact loading and repeated stresses on the cartilage surface result in chronic inflammation resulting in a chemical change in the cartilage, most significantly the proteoglycans which are responsible for cartilage resistance. Dr. Hartunian noted that with less resilience the cartilage becomes more susceptible to the 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. He opined, in conclusion, that there was no doubt that the high-impact loading activities engaged in by appellant in his employment position contributed to the development and progression of his arthritis.⁴

By decision dated September 5, 2017, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish a causal relationship between his bilateral hip condition and the accepted factors of his federal employment.

In reports dated October 3 and 7, 2005, received on February 15, 2018, Dr. Fulton C. Kornack, a Board-certified orthopedist, diagnosed right lumbar radiculitis secondary to L5-S1 disc herniation. Reports from Dr. Webber, dated January 4 to June 4, 2014, diagnosed osteoarthritis of the knee and lumbosacral radiculopathy. Dr. Neil S. Birnbaum, a Board-certified internist, treated appellant from April 3, 2015 to October 19, 2016, for lipoma, obesity, chronic pain disorder, and osteoarthritis in multiple joints. He noted that appellant worked as a letter carrier and walked a six- to seven-mile mail route each day.

On September 12, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. He subsequently withdrew that request and requested a review of the written record.

⁴ In this report, Dr. Hartunian indicated that appellant underwent an arthroplasty on the left hip. On January 31, 2018 Dr. Hartunian corrected this statement, noting that appellant underwent a left knee arthroplasty and not a left hip arthroplasty.

By decision dated April 26, 2018, an OWCP hearing representative affirmed the decision dated September 5, 2017.

On April 24, 2019 appellant requested reconsideration. In support of his request, he submitted a March 5, 2019 report from Dr. Hartunian, wherein he explained that medical studies revealed that age, environmental factors, genetics, weight, and physical labor play a role in the development and progression of osteoarthritis. Dr. Hartunian opined that the fact that appellant had impairing arthritis in both hips and knees and had surgical repair by age 60 indicates a genetic predisposition to arthritis. He further opined, however, that appellant had been susceptible to articular cartilage damage due to the impact loading activities of his job, which aggravated and accelerated the course of his condition.

By decision dated July 25, 2019, OWCP denied modification of the decision dated April 26, 2018.

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

⁵ 5 U.S.C. § 8101 *et seq.*

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. Ellyett*, 41 ECAB 992 (1990).

⁹ *See 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).

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

In a case in which 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.¹²

ANALYSIS

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

In support of his claim, appellant submitted a series of reports from Dr. Hartunian, including a March 11, 2017 report in which he diagnosed bilateral hip arthritis with articular cartilage damage and opined that appellant's bilateral hip osteoarthritis was caused or aggravated by his employment duties. In his reports Dr. Hartunian demonstrates that he had a proper history of appellant's employment position as a letter carrier and the specific duties that he performed over the course of his postal carrier. He correctly indicated that appellant's work required repetitive walking, bending, squatting, stooping, twisting, lifting, climbing, and reaching activities while carrying a mail satchel. In his June 9, 2017 report, Dr. Hartunian explained that the job of a letter carrier, over a 30-year career, can and does accelerate arthritis because of the continuous walking, stooping, and squatting which had hastened appellant's osteoarthritis. He explained, physiologically, that there was no doubt that the high-impact loading activities appellant engaged in as a letter carrier contributed to the development and progression of his arthritic conditions. Dr. Hartunian provided a direct opinion that arthritis is caused by a well-described biological/chemical process where excessive impact loading and repeated stresses on the cartilage surface result in chronic inflammation resulting in a chemical change in the cartilage, most significantly the proteoglycans which are responsible for cartilage resistance. With this in mind, he explained how the less resilient the cartilage becomes, the more susceptible it is to the 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. Likewise, in his March 25, 2019 supplemental report, Dr. Hartunian reiterated that appellant was susceptible to articular cartilage damage due to the impact-loading activities of his job, which aggravated and accelerated the course of his condition.

The Board finds that the opinion reports by Dr. Hartunian are sufficient to require OWCP to further develop the medical evidence. Dr. Hartunian is an orthopedic surgeon specializing in sports medicine 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

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 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).

and case history. His reports provide a pathophysiological explanation as to how appellant's employment duties as a letter carrier resulted in his diagnosed bilateral hip osteoarthritis. Dr. Hartunian provides a detailed physiologic explanation as to how articular cartilage in the hips is weakened and deteriorates with continued exposure to load bearing activities. 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.¹³ Accordingly, Dr. Hartunian's medical opinion is well-rationalized and logical and is therefore 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 done.¹⁶

On remand OWCP shall refer appellant, a statement of accepted facts, and the medical record to an appropriate specialist. The chosen physician shall provide a rationalized opinion as to whether the diagnosed bilateral hip conditions are causally related to the accepted factors of appellant's federal employment in his former position as a letter carrier. If the physician opines that the diagnosed conditions are not causally related, he or she must explain, with rationale, how or why the causation 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 the case is not in posture for decision.

¹³ *S.M.*, Docket No. 19-1634 (issued August 25, 2020); *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).

¹⁴ *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).

¹⁵ *See id.* *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁶ *See 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 July 25, 2019 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: October 20, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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