

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

O.T., Appellant)	
)	
and)	Docket No. 20-1444
)	Issued: October 12, 2021
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF INVESTIGATION,)	
Washington,DC, Employer)	
)	

Appearances: *Case Submitted on the Record*
*Erik B. Blowers, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 27, 2020 appellant, through counsel, filed a timely appeal from a June 30, 2020 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 a right hip condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 17, 2018 appellant, then a 56-year-old retired special agent, filed an occupational disease claim (Form CA-2) alleging that he sustained aggravation and/or acceleration of right hip osteoarthritis due to factors of his federal employment. He indicated that he had a right total hip replacement (THR) in 2011.⁴ Appellant noted that on March 19, 2018 his physician informed him that his right hip condition was caused by his work activities.

In a March 19, 2018 report, Dr. Stephen Candela, a Board-certified orthopedic surgeon, noted that appellant was seen for evaluation of his right hip. He noted that appellant had a left THR that "was a work-related injury with repetitive stress on the left side" and that appellant was retired with a left hip disability. Dr. Candela advised that the question was whether appellant's right hip condition also was caused by his job. He diagnosed degenerative joint disease (DJD) and osteoarthritis of the left and right hips, and explained that DJD was wear and tear and osteoarthritis was an inflammatory process, which "cascades with all the different factors." Dr. Candela noted that appellant had to participate in weightlifting, specifically regular squats with heavy weights, along with his regular duties of repetitive walking, climbing, stooping, squatting, and stairclimbing, as part of his regular duties and fitness program. He opined that "the cause of DJD and osteoarthritis, which has caused him to have a THR on the right side, is definitely work related with the stress on the joint." Dr. Candela explained that irritating the joint causes a progression of cascading effects, which lead to chondromalacia and further erosion of the joint, which leads to a joint replacement to relieve the pain, which becomes chronic. He opined: "I feel the right hip joint replacement was the same factors that caused the left hip joint to degenerate and, therefore, were found to be work related." Dr. Candela further advised that the left and right hips "both seem to have suffered from the same factors. [Diagnosis] has been confirmed by the patient's detailed medical history, work activities, clinical presentation, and abnormal findings on films with his regular exam[ination]." He opined that, "within a reasonable degree of medical certainty, the right THR was due to DJD and osteoarthritis caused by appellant's work-related stress from exercising, weight lifting, and running and walking and continuous impacting." Dr. Candela noted that appellant had no family history of osteoarthritis and, therefore, he had concluded that the right hip had the same problems with degeneration and osteoarthritis requiring joint replacement on the right side because of factors caused by his work activities.

³ Docket No. 19-1932 (issued May 21, 2020).

⁴ Appellant provided a May 31, 2018 statement relating that he sustained an injury to his left hip at work on June 29, 2017 and, thereafter, underwent a left hip replacement.

In a development letter dated May 18, 2018, 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 necessary and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond. In a separate development letter also dated May 18, 2018, it requested additional factual information from the employing establishment.

In a May 31, 2018 response to OWCP's development questionnaire, appellant noted his work history as a special agent, which included weightlifting, walking, running, climbing, squatting, and other physical activities, six days per week from 1988 to 2017. He noted that he served on the Special Weapons and Tactics (SWAT) and rapid deployment teams, which had additional physical fitness requirements, that his workouts lasted from one to one and a half hours per day, that he participated in a weekly basketball league with other agents once every other week for approximately four years, and that he injured his left hip on June 29, 2017, while participating in a running event during the annual fitness test, and had a left THR in 2017. Appellant indicated that he previously had his right hip replaced in 2011 and that Dr. Candela informed him that his right hip condition also was caused by his work activities. He related that Dr. Candela explained that his work activities continually placed stress on the joint, causing degenerative disease and osteoarthritis, which led to the right THR.

By decision dated July 3, 2018, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to accepted factors of appellant's employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 23, 2018 appellant, through counsel, requested reconsideration and submitted additional evidence.

A February 18, 2010 magnetic resonance imaging (MRI) scan of the right hip read by Dr. Sanford Davis, a Board-certified diagnostic radiologist, revealed no acute fracture or dislocation, degenerative changes in the hip joint, and fluid in the hip joint.

OWCP received an October 17, 2011 operative report from Dr. Michael T. Reilly, a Board-certified orthopedic surgeon, who performed a right total hip arthroplasty and autologous plasma tissue graft injection.

Appellant also resubmitted the March 19, 2018 report from Dr. Candela.

In an August 2, 2018 decision, OWCP modified the July 3, 2018 decision. It noted that a March 19, 2018 report from Dr. Candela diagnosed primary osteoarthritis of the right hip and degenerative joint disease of the right hip in connection with the claimed work factors. The claim remained denied, however, as the medical evidence of record was insufficient to establish causal relationship between the diagnosed right hip condition and the accepted factors of appellant's federal employment.

On October 18, 2018 appellant, through counsel, requested reconsideration. He argued that the medical evidence supported that appellant's right hip had the same medical issues as his left hip with degeneration and osteoarthritis caused by work activities.

OWCP received a November 15, 2017 report, wherein Dr. Candela provided an explanation regarding causal relationship of appellant's left hip condition to work-related activities. He opined that the DJD and osteoarthritis were clearly caused by, precipitated, accelerated, and/or aggravated by the daily exercise routines appellant engaged in during his 29-year career as a Federal Bureau of Investigation (FBI) special agent. Dr. Candela explained the differences between DJD and osteoarthritis, noting that DJD was wear and tear on a joint with thinning of articular cartilage and osteophyte formation and that osteoarthritis was where the joint became inflamed and painful. He opined that the DJD and trauma were clearly caused by and precipitated, accelerated, and/or aggravated by appellant's continuous workout routine. Dr. Candela noted that appellant's June 29, 2017 aggressive run caused a sudden worsening of the hip inflammation, sharp pain, and throbbing. He concluded that there was no doubt that appellant's left hip osteoarthritis was caused by his work activities.

In a July 25, 2017 statement, appellant noted his work activities since September 6, 1988. They included participating in the FBI physical fitness program with regular running and weightlifting on a daily basis with one day off per week, being on the SWAT team and rapid deployment team, and being a crisis management coordinator with additional physical fitness requirements. Appellant denied any history of osteoarthritis in his family. He noted that on June 29, 2017, while participating in the mandatory FBI physical fitness routine, he sustained an acute pain in his left hip that continued and progressively worsened since that date.

OWCP continued to receive duplicative evidence.

In a January 16, 2019 decision, OWCP denied modification of the August 2, 2018 decision.

On April 18, 2019 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a July 18, 2017 report, Dr. Candela provided an opinion on causal relationship that appellant's left THR and his previous right THR were more likely than not caused by, or accelerated by, the constant and repeated work activities of the past 29 years through his job as a special agent.

In an undated report received on April 18, 2019, Dr. Candela explained that he was providing an opinion related to appellant's injury and subsequent surgery for the right hip and arthritis in both hips with replacements in both hips. He noted that he had reviewed all of appellant's medical records from June 2011 through October 5, 2012. Dr. Candela opined that appellant "had degenerative arthritis and subsequent treatment with total hip replacement precipitated by his vigorous training and workloads on the hip. Therefore, the cause of his arthritis and degeneration was his work with no other reasonable cause being evident. This I believe should be evident to anyone who has any knowledge of the causes of arthritis and patients with this physical size and weight which do not contribute to osteoarthritis in his case."

OWCP received a September 1, 2011 report wherein Dr. Reilly indicated appellant was scheduled for a total hip replacement on October 3, 2011. It received a copy of his October 17, 2011 operative report. Dr. Reilly recommended a continued treatment plan on November 1, and November 22, 2011. In a December 9, 2011 report, he provided a gait analysis. Dr. Reilly

submitted a March 15, 2012 chart note advising that appellant was status post October 17, 2011 right non cemented total hip arthroplasty. He saw appellant on July 26, 2012 and noted that he was doing well post operatively.

OWCP received chart notes dated September 28, November 1 and 22, 2011, and June 14, 2012, from a physician assistant.

By decision dated June 13, 2019, OWCP denied modification of the January 16, 2019 decision.

On September 18, 2019 appellant, through counsel, filed a timely appeal to the Board from the June 13, 2019 decision. On May 21, 2020 the Board issued an *Order Remanding Case*.⁵ The Board found that the June 13, 2019 OWCP decision did not review all of the relevant evidence received on reconsideration. The Board remanded the case to OWCP to enable it to properly consider all the evidence submitted at the time of the June 13, 2019 decision.

By decision dated June 30, 2020, OWCP denied modification of the January 16, 2019 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 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,⁷ 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.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

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

⁵ Docket No. 19-1932 (issued May 21, 2020).

⁶ *Supra* note 2.

⁷ *See S.M.*, Docket No. 19-1634 (issued August 25, 2020); *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ 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).

condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.¹⁰

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.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 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, is sufficient to establish causal relationship.¹³

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.¹⁴

ANALYSIS

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

Appellant provided several reports from his treating physician, Dr. Candela, to support that his right hip conditions were causally related to the accepted factors of his federal employment.

In his March 19, 2018 report, Dr. Candela noted that appellant's left hip condition was accepted as work related and opined that the right hip condition also was work related. He noted that appellant had DJD and osteoarthritis of both hips which required the THR on the right side. Dr. Candela also noted that as a special agent, appellant had to participate in weightlifting, specifically regular squats with heavy weights, along with his regular duties of repetitive walking, climbing, stooping, squatting, and stair climbing. He opined that "I feel the right hip joint replacement was the same factors that caused the left hip joint to degenerate and therefore were found to be work related." Dr. Candela further opined that "the cause of DJD and osteoarthritis which has caused him to have a THR on the right side, is definitely work related with the stress on the joint." He explained that irritating the joint causes a progression of cascading effects which lead to chondromalacia, further erosion of the joint, and the THR.

¹⁰ 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).

¹¹ *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹² *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹³ *E.W.*, *supra* note 7; *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁴ 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).

In a report dated April 18, 2019, Dr. Candela noted that he had reviewed all of appellant's medical records from June 2011 through October 5, 2012. He opined that appellant "had degenerative arthritis and subsequent treatment with total hip replacement precipitated by his vigorous training and workloads on the hip. Therefore, the cause of appellant's arthritis and degeneration was his work with no other reasonable cause being evident. This I believe should be evident to anyone who has any knowledge of the causes of arthritis and patients with this physical size and weight which do not contribute to osteoarthritis in his case."

Dr. Candela is a Board-certified physician who is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship who reviewed appellant's medical record and explained the mechanism of appellant's injury. Although his opinion is insufficiently rationalized to establish causal relationship, it does raise an uncontroverted inference regarding causal relationship between the diagnosed condition and the accepted employment incident sufficient to require that OWCP further develop the medical evidence relating to the claim.¹⁵

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 and OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁶

The case shall, therefore, be remanded for OWCP to administratively combine appellant's claims relevant to the right hip, and refer appellant to a specialist in the appropriate field of medicine, along with the case record and an updated statement of accepted facts (SOAF). The referral physician shall provide a well-rationalized opinion as to whether appellant's diagnosed conditions are causally related to the accepted employment factors. If the physician opines that the diagnosed conditions are not causally related to the employment incident, he or she must provide a rationalized explanation as to why their opinion differs from that of Dr. Candela. After this and such other further development deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹⁵ See *A.K.*, Docket No. 20-1426 (issued March 8, 2021); *E.G.*, Docket No. 19-1296 (issued December 19, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁶ See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

ORDER

IT IS HEREBY ORDERED THAT the June 30, 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: October 12, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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