

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

R.P., Appellant)	
)	
and)	
)	
DEPARTMENT OF HOMELAND SECURITY,)	Docket No. 21-1189
TRANSPORTATION SECURITY)	Issued: July 29, 2022
ADMINISTRATION, FEDERAL AIR)	
MARSHAL SERVICE, Sunrise, FL, Employer)	
)	

Appearances:
Aaron B. Aumiller, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 30, 2021 appellant, through counsel, filed a timely appeal from a February 2, 2021 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 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 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish that his right hip reactive synovitis and osteoarthritis were causally related to his accepted June 22, 2017 employment injury; (2) whether appellant has met his burden of proof to establish disability from work for the period August 24, 2017 through March 10, 2019 due to his accepted June 22, 2017 employment injury.

FACTUAL HISTORY

On June 22, 2017 appellant, then a 54-year-old federal air marshal, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he developed right hip pain when he was flipped over, and he landed on his right hip during defensive measures training while in the performance of duty. He stopped work on the date of the claimed injury. OWCP accepted appellant's claim for sprain of ligaments of the lumbar spine and strain of muscle, fascia, and tendon of the right hip.

On June 26, 2017 Dr. Milton R. Bengoa, an internist, noted that appellant could return to work on July 1, 2017. The record indicates that appellant received continuation of pay (COP) from June 25 to 30, 2017, and that he returned to full-duty work on July 1, 2017. Appellant stopped work again on August 23, 2017.

In form reports dated September 14 and October 12, 2017, Dr. Michael R. Gombosh, a Board-certified orthopedic surgeon and an employing establishment physician, opined that appellant could perform light-/limited-duty work with restrictions. In a September 14, 2017 note, he indicated that a right pelvis and hip x-ray demonstrated no acute fractures, dislocations, or suspicious osseous lesions. In an October 12, 2017 duty status report (Form CA-17), Dr. Gombosh noted a history of the claimed June 22, 2017 employment injury. He diagnosed lumbar sprain, right hip strain, and right hip reactive synovitis due to injury. Dr. Gombosh advised that appellant could not resume work and listed his work restrictions.

On October 18, 2017 appellant accepted the employing establishment's job offer for a limited-duty federal air marshal position.

OWCP subsequently received additional medical evidence from Dr. Gombosh. In follow-up notes and CA-17 forms dated December 13, 2017, Dr. Gombosh noted appellant's history of injury on June 22, 2017, provided examination findings and diagnostic test results. He diagnosed the accepted conditions of lumbar sprain and strain and right hip sprain. Dr. Gombosh reiterated his prior diagnosis of right hip reactive synovitis and also diagnosed exacerbation of underlying osteoarthritis. He noted that appellant's lumbar sprain and strain had resolved. However, Dr. Gombosh related that appellant had a persistently symptomatic right hip reactive synovitis in a setting of underlying end-stage osteoarthritis. He noted that appellant's current right hip pain was an aggravation of his underlying osteoarthritis. Dr. Gombosh advised that appellant was unable to perform his current job, but he could return to light-duty work with the previous work restrictions set forth in workers' compensation forms.

In a December 21, 2017 report, Dr. Tifani Gleeson, Board-certified in occupational medicine, reviewed appellant's medical records on behalf of the employing establishment. She noted the accepted conditions of sprain of the ligaments of the lumbar spine and strain of muscle, fascia, and tendon of right hip. Dr. Gleeson noted that appellant was off work on intermittent dates from June 23 through July 1, 2017 and then returned to regular-duty work. During the period August 23 through October 18, 2017 appellant performed limited-duty work. Dr. Gleeson advised that appellant had preexisting right hip osteoarthritis. She related that it was not clear whether his current clinical status and limitations resulted from his underlying condition or from his accepted conditions. Dr. Gleeson recommended a second-opinion examination with a functional capacity evaluation (FCE) to clarify and delineate appellant's permanent work restrictions for appropriate placement in a job at the employing establishment or referral to vocational rehabilitation.

Dr. Richard F. Pell, IV, a Board-certified orthopedic surgeon, related in a January 25, 2018 letter, that appellant was scheduled to undergo right hip arthroplasty surgery on January 31, 2018. In a January 31, 2018 operative report, he performed unauthorized right total hip replacement on that date. In a February 9, 2018 disability certificate, Dr. Pell advised that appellant was partially incapacitated as of that date. On March 16, 2018 he indicated that appellant was unable to perform light-duty work.

On March 13, 2019 appellant filed a claim for compensation (Form CA-7) seeking compensation for disability from work for the period August 24, 2017 through March 10, 2019. He submitted a September 21, 2018 letter from the Office of Personnel Management approving his application for disability retirement.³

In a March 20, 2019 letter, the employing establishment challenged appellant's claim for compensation, contending that he was not in a leave without pay (LWOP) status during the claimed period, but rather he received COP for five days following his June 22, 2017 employment injury, returned to full-duty work on July 1, 2017, and subsequently claimed a recurrence of disability. It placed appellant on limited-duty work, but appellant refused its offer of limited-duty work even though his physician did not indicate that he could not work. The employing establishment further noted that appellant received intermittent COP for medical appointments to March 14, 2018.

OWCP, in a development letter dated March 22, 2019, informed appellant that the evidence submitted was insufficient to establish his claim for disability. It advised him of the type of medical evidence necessary to establish his claim and afforded him 30 days to respond. No additional evidence was received.

By decision dated May 21, 2019, OWCP denied appellant's claim for compensation for disability from work for the period August 24, 2017 through March 10, 2019. It found that the medical evidence of record was insufficient to establish that he was disabled from work during the claimed period, due to a worsening of his accepted June 22, 2017 employment injury. Additionally, OWCP noted that appellant had not responded to its March 22, 2019 development letter.

³ A notification of personnel action Standard Form (SF) 50 dated October 11, 2018 noted that appellant retired from the employing establishment effective October 13, 2018.

On May 28, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on September 11, 2019. During the hearing, appellant testified that his January 31, 2018 right hip total replacement caused his claimed disability.

In a November 8, 2019 decision, an OWCP hearing representative affirmed the May 21, 2019 decision, finding that the medical evidence of record did not contain a rationalized medical opinion explaining the causal relationship between appellant's diagnosed conditions and disability from work during the period August 24, 2017 through March 10, 2019.

OWCP subsequently received additional medical evidence by Dr. Pell. In a January 5, 2018 letter, Dr. Pell examined appellant, provided an impression of severe right hip osteoarthritis, and recommended revision right hip arthroplasty. In a February 9, 2018 report and February 16, 2018 progress notes, he diagnosed idiopathic osteoarthritis, right hip unilateral primary osteoarthritis, and localized primary osteoarthrosis involving the pelvic region and thigh. Dr. Pell provided an impression of status post right total hip replacement and mild lumbar dextroscoliosis.

On November 7, 2020 appellant, through counsel, requested reconsideration of the November 8, 2019 decision and submitted additional medical evidence.

In an October 14, 2020 report, Dr. Joshua B. Macht, a Board-certified internist, noted a history of the June 22, 2017 employment injury and appellant's medical treatment. He discussed examination findings and diagnosed postoperative state of right hip status post total hip replacement. Dr. Macht opined that appellant had preexisting right hip osteoarthritis that was not only aggravated, but also accelerated by the June 22, 2017 employment injury. He further opined that his need for right total hip replacement was directly caused by the accepted employment injury.

On January 14, 2021 OWCP routed Dr. Gombosh's September 14 and October 12, 2017 reports, Dr. Macht's October 14, 2020 report, a statement of accepted facts (SOAF), and the case file to Dr. Eric M. Orenstein, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), for review and determination as to whether appellant's diagnosed conditions of right hip reactive tenosynovitis, and aggravation of preexisting right hip osteoarthritis were causally related to the June 22, 2017 employment injury. Additionally, OWCP asked Dr. Orenstein to address whether the January 31, 2018 right total hip replacement surgery also resulted from his June 22, 2017 employment injury.

On January 17, 2021 Dr. Orenstein noted a review of the medical record and the reports of Dr. Gombosh and Dr. Macht. He advised that appellant had preexisting severe joint space narrowing of the right hip and evidence of femoroacetabular impingement syndrome with cam and pincer lesions at the time of his accepted June 22, 2017 employment injury based on his initial and follow-up hip x-rays. Dr. Orenstein further advised that the force of the accepted employment injury was not sufficient or competent to result in the diagnosis of right hip reactive synovitis and aggravation of preexisting right hip osteoarthritis. He noted that appellant's right total hip replacement was medically necessary, but it was not causally related to the accepted employment injury. Dr. Orenstein opined that, based on right hip magnetic resonance imaging (MRI) scan and

x-ray findings, appellant would have required hip replacement surgery regardless of whether he sustained the accepted work injury.

OWCP, by decision dated February 2, 2021, denied modification of the November 8, 2019 decision.

LEGAL PRECEDENT -- ISSUE 1

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 a causal relationship between the diagnosed condition and the employment injury 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 employment injury.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish that his right hip reactive synovitis and osteoarthritis were causally related to his accepted June 22, 2017 employment injury.

Appellant submitted several reports from Dr. Gombosh diagnosing additional right hip conditions. In October 12, 2017 reports, Dr. Gombosh diagnosed the accepted conditions of lumbar sprain and right hip strain, and he also diagnosed right hip reactive synovitis. He opined that the diagnosed conditions were due to the June 22, 2017 employment injury. The Board has held that a report is of limited probative value regarding causal relationship if it is conclusory and does not contain medical rationale explaining how a given medical condition has an employment-related cause.⁸ Although he supported causal relationship, Dr. Gombosh did not provide sufficient medical rationale explaining the basis of his conclusory opinion that appellant's additional right

⁴ *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁵ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *Id.*

⁸ *See S.S.*, Docket No. 21-0763 (issued November 12, 2021); *A.G.*, Docket No. 21-0756 (issued October 18, 2021); *T.S.*, Docket No. 20-1229 (issued August 6, 2021).

hip conditions were due to the June 22, 2017 employment injury.⁹ In his December 13, 2017 report, he further related that appellant had a persistently symptomatic right hip reactive synovitis in a setting of underlying end-stage osteoarthritis. This report was insufficient to establish that appellant's right hip reactive synovitis and end-stage osteoarthritis were causally related to the accepted employment injury as he did not address whether the June 22, 2017 employment-related injury had caused these conditions. As the Board has held, medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁰ For these reasons, the Board finds that Dr. Gombosh's reports are insufficient to establish the claim.

OWCP also received reports from Dr. Pell dated January 5 through March 16, 2018. In these reports, Dr. Pell noted appellant's right hip conditions and that he had undergone unauthorized right total hip replacement performed on January 31, 2018. However, he did not provide an opinion addressing whether appellant's right hip reactive synovitis and osteoarthritis, and appellant's January 31, 2018 right hip surgery, were causally related to the accepted employment injury.¹¹ For these reasons, the Board finds that this evidence is insufficient to establish causal relationship.

Appellant also submitted medical evidence from Dr. Macht. In an October 14, 2020 report, Dr. Macht opined that appellant's preexisting right hip osteoarthritis was aggravated and accelerated by the June 22, 2017 employment injury. He further opined that appellant's need for right total hip replacement was caused by the accepted employment injury. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition has an employment related cause.¹² The Board has held that a medical opinion should reflect a correct history and offer a medically-sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.¹³ As Dr. Macht provided insufficient rationale supporting his opinion regarding causal relationship, the Board finds that the October 14, 2020 medical report from Dr. Macht is insufficient to establish causal relationship.

OWCP referred the evidence to Dr. Orenstein for an opinion regarding whether appellant had established additional employment-related conditions and whether his January 31, 2018 right total hip replacement surgery was necessitated by the accepted June 22, 2017 employment injury. In a February 1, 2021 report, Dr. Orenstein noted that appellant had preexisting severe joint space narrowing of the right hip and evidence of femoroacetabular impingement syndrome with cam and

⁹ *R.T.*, Docket No. 17-1230 (issued May 3, 2018); *T.M.*, Docket No. 08-0975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹⁰ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *Id.*

¹² *See S.S.*, Docket No. 21-0763 (issued November 12, 2021); *A.G.*, Docket No. 21-0756 (issued October 18, 2021); *T.S.*, Docket No. 20-1229 (issued August 6, 2021).

¹³ *T.G.*, Docket No. 21-0175 (issued June 23, 2021); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *see K.W.*, Docket No. 19-1906 (issued April 1, 2020).

pincer lesions. However, he opined that the force of the accepted employment injury was not sufficient or competent to result in the diagnosis of right hip reactive synovitis and aggravation of preexisting right hip osteoarthritis. Dr. Orenstein further opined that appellant's right total hip replacement was medically necessary, but it was not causally related to the accepted employment injury.

The Board finds that OWCP properly accorded the weight of the medical evidence to Dr. Orenstein. Dr. Orenstein based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion. He provided a well-rationalized opinion based on medical evidence and negated a causal relationship between appellant's diagnosed right hip reactive synovitis and osteoarthritis and his June 22, 2017 employment injury.¹⁴

The medical evidence of record therefore does not establish that appellant's right hip reactive synovitis and osteoarthritis were causally related to his June 22, 2017 employment injury.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA¹⁵ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.¹⁶ The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.¹⁷ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹⁸

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence.¹⁹ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty,

¹⁴ *T.D.*, Docket No. 21-0321 (issued July 13, 2021).

¹⁵ *Supra* note 2.

¹⁶ *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁷ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹⁸ *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁹ *L.O.*, Docket No. 20-0170 (issued August 13, 2021); *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the specific employment factors identified by the employee.²⁰

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.²¹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish disability from work for the period August 24, 2017 through March 10, 2019.

The record reflects that Dr. Bengoa released appellant to return to full-duty work on July 1, 2017 and appellant did return to work on that date. Dr. Bengoa stopped work on August 23, 2017.

In form reports dated September 14 and October 12, 2017, Dr. Michael R. Gombosh, a Board-certified orthopedic surgeon, opined that appellant could perform light-/limited-duty work with restrictions. However, Dr. Gombosh did not offer an explanation as to why appellant required specific work restrictions based on objective medical evidence.²²

By a December 13, 2017 report, Dr. Gombosh opined that appellant's diagnoses included right hip reactive synovitis in a setting of underlying end-stage osteoarthritis. As previously explained, neither Dr. Gombosh, nor Dr. Pell or Macht provided sufficiently rationalized opinions that appellant's right hip reactive synovitis and osteoarthritis were causally related to the accepted June 22, 2017 employment injury. Their continuing opinions regarding appellant's disability caused by these additional diagnoses was therefore insufficient to establish that appellant was disabled after August 23, 2017 due to objective findings related to his accepted June 22, 2017 employment injury.²³

Dr. Gleeson's December 21, 2017 report noted that appellant was off work on intermittent dates from June 23 through July 1, 2017 and then returned to regular-duty work. She noted, however, that it was not clear whether his current condition and limitations were related to the accepted conditions of lumbar sprain and right hip strain. Dr. Gleeson's opinion on causal relationship between appellant's current condition and work limitations is speculative in nature.²⁴ The Board finds, therefore, that her report is insufficient to establish appellant's disability claim.

²⁰ V.A., Docket No. 19-1123 (issued October 29, 2019); C.B., Docket No. 18-0633 (issued November 16, 2018).

²¹ See S.G., Docket No. 18-1076 (issued April 11, 2019); William A. Archer, 55 ECAB 674 (2004); Fereidoon Kharabi, 52 ECAB 291 (2001).

²² *Id.*

²³ *Id.*

As appellant has not established that he was disabled after August 23, 2017 due to objective findings of his accepted June 22, 2017 employment-related conditions of lumbar strain and right hip sprain, he has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his right hip reactive synovitis and osteoarthritis were causally related to his accepted June 22, 2017 employment injury. Appellant has also not established that he was disabled from work for the period August 24, 2017 through March 10, 2019 due to his accepted June 22, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board