

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

_____)	
T.K., Appellant)	
)	
and)	Docket No. 22-0334
)	Issued: July 13, 2022
U.S. POSTAL SERVICE, POST OFFICE, Peabody, MA, Employer)	
_____)	

Appearances:
Daniel B. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 4, 2022 appellant, through counsel, filed a timely appeal from a September 9, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the

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 an 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, through counsel, submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, counsel asserted that the impartial medical examiner (IME) failed to provide sufficient rationale for his opinion and relied upon an inaccurate definition of causation. He maintains that issues such as OWCP failing to accept reasoned reports from appellant's attending physician repeatedly occurred, and that he sought oral argument to resolve such issues. The Board, in exercising its discretion, denies appellant's request for oral argument because this matter requires an evaluation of the medical evidence presented. As such, the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

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.

ISSUE

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include a permanent aggravation of preexisting bilateral hip osteoarthritis causally related to his accepted employment injury.

FACTUAL HISTORY

On January 16, 2019 appellant, then a 47-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained osteoarthritis of the bilateral hips causally related to factors of his federal employment. He noted that he first became aware of his condition on February 15, 2017 and realized its relation to his federal employment on August 3, 2017. Appellant did not stop work.

On February 15, 2017 appellant underwent a left total hip arthroplasty, and on February 16, 2018 underwent a left hip revision arthroplasty.

In an undated report received by OWCP on January 28, 2019, Dr. David C. Morley, Jr., a Board-certified orthopedic surgeon, outlined appellant's job duties and provided his review of the medical evidence. He opined that the repetitive impact loading activities had caused severe left hip arthritis that required a total hip replacement. Dr. Morley further found that appellant had early right hip arthritis, and advised that it "will progress given the physical demands of [appellant's] occupation as a letter carrier." He also diagnosed bilateral patellofemoral arthritis of the knees and a right foot condition due to appellant's employment. Dr. Morley asserted that the stress on appellant's lower extremity joints due to repetitive heavy physical demands had caused a loss of articular cartilage and a "secondary inflammatory process which further accelerates the deterioration of the joint." He related, "Such a causal relationship between a joint already afflicted with arthritis and the progression of that arthritis to an end-stage condition by acceleration due to laborious work duties, such as those of a letter carrier, is well documented, supported by a multitude of studies, and something that I regularly see in clinical practice...."

On March 20, 2019 OWCP referred appellant, together with a statement of accepted facts (SOAF) and a list of questions, to Dr. Stanley Hom, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated May 3, 2019, Dr. Hom obtained a history of appellant initially experiencing left hip symptoms in 2015. He diagnosed left hip osteoarthritis status left total hip replacement and revision hip arthroplasty and mild osteoarthritis of the right hip. Dr. Hom advised that medical literature found no strong evidence relating hip osteoarthritis to occupational risk factors such as walking, standing, lifting, and climbing. He opined that appellant's bilateral hip osteoarthritis was unrelated to his employment. Dr. Hom related, "I suspect the examinee experienced temporary aggravations (FECA defined) of [appellant's] hip conditions throughout the course of time, including his work activities. Most all of these episodes did not warrant any formal medical treatment. I would estimate that the time period of these temporary aggravations

³ 5 U.S.C. § 8101 *et seq.*

lasted from days to weeks.” He opined that appellant’s left hip arthroplasty and revision resulted from his left hip osteoarthritis and were “unrelated to [appellant’s] federal work duties.”

On May 28, 2019 OWCP accepted appellant’s claim for a temporary aggravation of preexisting bilateral osteoarthritis of the hips.

OWCP found that a conflict in medical opinion existed between Dr. Morley and Dr. Hom regarding whether appellant had sustained a temporary or permanent aggravation of bilateral hip osteoarthritis. It referred appellant to Dr. John H. Chaglassian, a Board-certified orthopedic surgeon, for an impartial medical examination. OWCP provided a SOAF setting forth appellant’s employment duties as a letter carrier beginning in 1997. It also attached a memorandum setting for the definition of direct causation, temporary and permanent aggravation, acceleration, and precipitation.

In a report dated July 24, 2019, Dr. Chaglassian provided his review of the medical evidence. On examination, he measured range of motion of the left hip. Dr. Chaglassian found some motor weakness on the left and a normal lower extremity neurovascular examination. He noted that appellant had no history of a traumatic hip injury. Dr. Chaglassian related that appellant’s arthritis primarily resulted from “an inherited genetic factor and had no causality whatsoever to [appellant’s] [f]ederal work activities as a letter carrier.” He opined that appellant’s hip arthritis would have occurred even if he had performed sedentary work. Dr. Chaglassian asserted that appellant may have sustained a temporary aggravation of the preexisting arthritis for a few days to a week, but that appellant’s employment duties did not cause, accelerated, precipitate, or permanently aggravate his arthritis. He advised that orthopedic literature failed to support that impact on the knees and hips caused arthritis absent acute trauma. Dr. Chaglassian found that appellant’s hip replacement was reasonably necessary, but not causally related to his work duties.

By decision dated August 2, 2019, OWCP denied appellant’s request to expand the acceptance of his claim to include a permanent aggravation of preexisting bilateral hip osteoarthritis. It accorded the special weight to Dr. Chaglassian.

On August 9, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review. On September 9, 2019 he requested that subpoenas be issued to Dr. Hom and Dr. Chaglassian.

In a memorandum dated October 15, 2019, counsel asserted that Dr. Chaglassian, in another OWCP file number with similar facts, had opined that any aggravation of arthritis should be considered permanent. He noted that Dr. Chaglassian had not used a goniometer and asserted that he had failed to follow OWCP procedures. Counsel noted that he had relied solely upon literature from orthopedic literature in addressing causation rather studies from rheumatology and occupational health journals. He maintained that OWCP provided an incomplete SOAF to Dr. Hom and Dr. Chaglassian as it did not fully describe appellant’s work duties. Counsel further asserted that OWCP failed to provide the proper definition of causation as appellant did not have a work injury or illness, but instead a condition to which work activities contributed. He argued that Dr. Hom had expressed contradictory opinions in other cases and based his opinion only on one medical text.

On September 16, 2019 OWCP denied appellant’s request for issuance of subpoenas to Dr. Hom and Dr. Chaglassian.

A telephonic hearing was held on October 22, 2019.

By decision dated December 2, 2019, OWCP's hearing representative affirmed the August 2, 2019 decision

On February 24, 2020 appellant, through counsel, requested reconsideration. In a memorandum dated February 21, 2020, counsel maintained that reports from Dr. Hom and Dr. Chaglassian were not well rationalized. He asserted that Dr. Chaglassian failed to support his assertion that most orthopedic surgeons did not find causation between employment and osteoarthritis of the lower extremities. Counsel submitted excerpts describing articles from medical journals supporting causation between occupational factors and arthritis.

By decision dated August 26, 2020, OWCP denied modification of its December 2, 2019 decision.

On November 17, 2020 appellant underwent a revision of his left total hip arthroplasty and excision of heterotopic bone from the left hip.

In a report dated August 2, 2021, Dr. Robert W. Macht, a surgeon, discussed appellant's work duties and listed the medical evidence he had reviewed. He diagnosed status post left hip total replacement surgery with two revisions and primary right hip joint osteoarthritis. Dr. Macht opined that appellant's work duties "contributed to the progression of [appellant's] bilateral hip osteoarthritis and need for left hip replacement and revision surgeries." He advised that repetitive loading activities "accelerates the progression of osteoarthritis through chronic inflammation." Dr. Macht disagreed with Dr. Chaglassian's opinion and noted that he had not reviewed the evidence from his 2020 revision surgery, which supported that appellant's hip aggravation was permanent. He related that Dr. Chaglassian "failed to discuss how [appellant's] progressive hip osteoarthritis could be temporary in nature or revert to a prior condition once aggravated." Dr. Macht further disagreed with his finding that appellant's bilateral hip osteoarthritis resulted from an inherited gene and that repetitive impact loading at work could not accelerate or aggravate osteoarthritis. He related, "As explained above, repeated stress from repetitive impact loading activities accelerates the progression of osteoarthritis through chronic inflammation. There is an abundance of peer-reviewed medical literature available which conclusively shows a clear association between strenuous and repetitive work factors and lower extremity osteoarthritis." Dr. Macht further maintained that Dr. Hom had not provided any rationale for his finding that arthritic hip conditions could be temporary.

On August 23, 2021 appellant, through counsel, requested reconsideration.

By decision dated September 9, 2021, OWCP denied modification of its August 26, 2020 decision.

LEGAL PRECEDENT

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

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).

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 implicated employment factor(s) 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

Section 8123(a) of FECA provides in pertinent part that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁸ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁹ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical examiner (IME) for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁰

When OWCP obtains an opinion from an IME for the purpose of resolving a conflict in medical opinion, and the IME's opinion requires clarification or elaboration, OWCP must secure a supplemental report from the specialist to correct the defect in the original report.¹¹ If the IME is unable to clarify or elaborate on his original report, or if his supplemental report is vague, speculative, or lacking in rationale, OWCP shall refer appellant to a new IME.¹²

ANALYSIS

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

OWCP properly determined that a conflict in medical opinion existed between Dr. Morley and Dr. Hom regarding whether appellant had sustained a permanent aggravation of bilateral osteoarthritis of the knees causally related to factors of his federal employment. It referred him to Dr. Chaglassian for an impartial medical examination to resolve the conflict in medical opinion pursuant to 5 U.S.C. § 8123(a).

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 5 U.S.C. § 8123(a).

⁹ 20 C.F.R. § 10.321.

¹⁰ *R.H.*, Docket No. 21-0493 (issued March 4, 2022); *K.S.*, Docket No. 19-0082 (issued July 29, 2019).

¹¹ *R.T.*, Docket No. 20-0081 (issued June 24, 2020); *Raymond A. Fondots*, 53 ECAB 637, 641 (2002); *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988); *Ramon K. Ferrin, Jr.*, 39 ECAB 736 (1988).

¹² *See C.E.*, Docket No. 19-1923 (issued March 30, 2021); *M.S.*, Docket No. 18-1228 (issued March 8, 2019); *R.H.*, Docket No. 17-1903 (issued July 5, 2018).

In his July 24, 2019 report, Dr. Chaglassian found that appellant's hip arthritis resulted from an inherited genetic factor and was thus not causally related to factors of his federal employment. He indicated that appellant may have temporarily aggravated appellant's preexisting arthritis for a few days to a week, but that his work duties had not caused, accelerated, precipitated, or permanently aggravated his arthritis. Dr. Chaglassian asserted that orthopedic literature failed to support that impact on the knees and hips caused arthritis absent acute trauma. He further opined that appellant's hip replacement was reasonably necessary, but not causally related to his work duties. Dr. Chaglassian, however, did not explain why appellant's bilateral hip osteoarthritis resulted from an "inherited gene" rather than the accepted employment injury other than to assert that it was not supported by medical literature. Reliance on medical literature has little probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the articles to the specific factual situation at hand.¹³ Dr. Chaglassian referenced orthopedic literature and provided a general conclusion that a permanent aggravation of osteoarthritis could not occur because of external factors other than traumatic injury. The Board has found that, when an IME fails to provide medical reasoning to support his conclusory statements about a claimant's condition, it is insufficient to resolve a conflict in the medical evidence.¹⁴

For the above-described reasons, the opinion of Dr. Chaglassian requires clarification. Therefore, in order to resolve the conflict in medical opinion evidence, the Board will remand the case for OWCP to obtain a supplemental opinion regarding whether OWCP should expand its acceptance of the claim to include a permanent aggravation of bilateral knee osteoarthritis.¹⁵ If Dr. Chaglassian is unable to clarify or elaborate on his original report or if his supplemental report is also vague, speculative, or lacking in rationale, OWCP must submit the case record and a detailed SOAF to a new IME for the purpose of obtaining his or her rationalized medical opinion on the issue.¹⁶ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁷

CONCLUSION

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

¹³ *S.J.*, Docket No. 20-0896 (issued January 11, 2021); *R.G.*, Docket No. 18-0917 (issued March 9, 2020); *Roger D. Payne*, 55 ECAB 535 (2004).

¹⁴ *R.G.*, Docket No. 21-0812 (issued February 28, 2022); *K.C.*, Docket No. 19-1251 (issued January 24, 2020).

¹⁵ *See S.M.*, Docket No. 20-1527 (issued March 29, 2022).

¹⁶ *T.H.*, Docket No. 21-0207 (issued December 22, 2021); *R.H.*, Docket No. 17-1903 (issued July 5, 2018).

¹⁷ On appeal counsel asserts that OWCP insufficiently detailed appellant's work duties in its SOAF and set forth the wrong causation standard. However, OWCP described his duties as a letter carrier since 1997 in the SOAF. It further provided its referral physicians with definitions of causation, aggravation, acceleration, and precipitation consistent with the definitions set forth in its procedures. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (January 2013).

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2021 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: July 13, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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