

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

_____)	
L.J., Appellant)	
)	
and)	Docket No. 22-1176
)	Issued: November 20, 2023
U.S. POSTAL SERVICE, JACKSONVILLE)	
MOWU MY PO POST OFFICE,)	
Jacksonville, FL, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On August 8, 2022 appellant, through counsel, filed a timely appeal from a July 25, 2022 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.³

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 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the July 25, 2022 merit decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a left hip condition causally related to the accepted August 4, 2020 employment incident.

FACTUAL HISTORY

On August 6, 2020 appellant, then a 60-year-old rural delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on August 4, 2020 she sustained injuries to her hip, leg, and back when moving heavy packages weighing approximately 70 pounds while in the performance of duty. She also claimed that she developed osteoarthritis which caused severe pain when walking or sitting. Appellant stopped work on August 4, 2020.

In support of her claim, appellant submitted an August 4, 2020 visit note from Dr. Reginald Sanon, a Board-certified emergency medicine practitioner, noting that she had a history of chronic neck pain and right knee pain secondary to osteoarthritis and chronic pain management. Dr. Sanon diagnosed osteoarthritis of the left hip and indicated that appellant reported experiencing acute, sharp, severe pain to her low back, and left hip after lifting heavy boxes at her workplace that morning.

In a prescription note dated August 4, 2020, Dr. Sanon requested that appellant be excused from work until August 9, 2020. In a visit report and discharge summary of even date, he prescribed medication.

Appellant also submitted an August 4, 2020 computerized tomography (CT) scan of her left hip, noting an impression of end-stage osteoarthritis of the left hip joint. An x-ray report of her left hip of even date noted an impression of severe degeneration of the left hip joint and an x-ray report of her lumbar spine indicated an impression of degenerative changes of the spine.

An August 6, 2020 patient record from Dr. Sanon noted a primary impression of left hip osteomyelitis.

In an August 7, 2020 statement, appellant's supervisor, J.C., asserted that appellant had an existing hip condition and noted that she had mentioned a few weeks prior that she was getting a magnetic resonance imaging (MRI) scan of her hips. J.C. related that when appellant went home from work on August 4, 2020, she did not mention having an accident. Rather, she simply requested permission to go home because of hip pain, and he approved her request.

On August 7, 2020 the employing establishment completed and signed an authorization for examination and/or treatment (Form CA-16). OWCP also received a coding summary of even date.

An August 24, 2020 duty status report (Form CA-17) signed by an unknown medical provider noted a preexisting condition of the left hip/leg and diagnosed degenerative disc disease of the lumbar spine and degenerative joint disease (DJD) of the hip.

In a September 3, 2020 visit note, Dr. Anuj Sharma, an osteopath and Board-certified physiatrist, diagnosed a left hip strain and aggravation of left hip DJD.

In an October 13, 2020 Form CA-17, an unidentified medical provider diagnosed degenerative disc disease of the lumbar spine and DJD of the left hip.

In an October 21, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a development questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response to the development letter, appellant submitted a February 27, 2020 cervical spine x-ray report noting an impression of multilevel degenerative changes. OWCP also received a March 16, 2020 cervical spine MRI scan report noting an impression of slight progression of left posterior paracentral disc herniation at C4-5 and cervical spondylosis with multilevel facet and uncovertebral joint arthrosis.

An April 14, 2020 x-ray report of the pelvis noted an impression of severe osteoarthritis of the left hip, with some remodeling, and an x-ray report of even date of the right knee noted an impression of mild osteoarthritis and proximal tibial sclerotic lesion, most characteristic of enchondroma.

A June 30, 2020 MRI scan report of appellant's lumbar spine revealed an impression of L2-3 posterior disc bulge, L3-4 posterior diffuse disc bulge, L4-5 anterior listhesis and posterior diffuse disc bulge, and L5-S1 right far lateral focal disc herniation.

In an October 5, 2020 visit note, Dr. Sharma reiterated his prior diagnosis and returned appellant to work.

In an October 23, 2020 response to OWCP's development questionnaire, appellant asserted that she was injured when she attempted to pick up a large box weighing approximately 70 pounds and her left leg collapsed. She related that she had preexisting neck and back conditions and experiences flare ups four days a month, but has never had issues with her hip or leg.

By decision dated November 25, 2020, OWCP accepted that the August 4, 2020 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted August 4, 2020 employment incident.

Appellant continued to submit evidence, including an undated note from Dr. Sharma noting that she was injured at work on August 4, 2020 when she engaged in twisting and lifting motions while carrying 70-pound boxes. Dr. Sharma opined that the x-ray and CT scan reports revealed advanced osteoarthritis and that she required hip surgery. He concluded that the employment injury caused immediate injury and permanent aggravation of appellant's left hip condition and of her preexisting osteoarthritis.

In a November 2, 2020 visit note, Dr. Sharma diagnosed left hip aggravation and referred appellant for total left hip replacement. In visit notes dated November 30 and December 18, 2020 and January 28, 2021, he continued to treat her and opined that her left hip injury was directly causally related to her employment injury, referred her to an orthopedic surgeon, and returned her to work.

In a January 28, 2021 Form CA-17, Dr. Sharma diagnosed a left hip contusion and DJD of the left hip.

On February 25, 2021 Dr. Sharma treated appellant and reiterated his prior diagnosis and opinion that she required hip replacement due to the claimed August 4, 2020 employment injury.

On April 7, 2021 appellant requested reconsideration and submitted additional evidence.

In an undated letter, appellant related that she has worked for the employing establishment for 14 years and that the August 4, 2020 accident was causally related to her job. She indicated that she was casing mail and parcels for up to 5 hours daily and that there was often insufficient space and equipment, requiring her to manually twist, lift, and carry hundreds heavy parcels weighing up to 70 pounds down a loading ramp 20 yards away and to her vehicle. Appellant further asserted that she stepped into and out of her vehicle over 100 times per day and load mail trays weighing up to 20 pounds each. She indicated that this has caused her osteoarthritis to worsen and caused severe damage to her hip.

Appellant also submitted November 2 and 30, 2020 laboratory requests and test results.

In March 25, 2021 visit notes, Dr. Sharma diagnosed left hip pain, an aggravation of a left hip condition, and end-stage left hip DJD. In another note of even date, he indicated that appellant injured her left hip while carrying, lifting, and twisting a heavy object at work which caused her to experience a sharp pain in her left hip. Dr. Sharma further indicated that diagnostic testing revealed end-stage left hip osteoarthritis and opined that the diagnosis was a direct and permanent aggravation of her left hip DJD. He further noted that, prior to this injury, appellant worked full time without issues. Dr. Sharma concluded that her left hip osteoarthritis was a direct result of the claimed August 4, 2020 work injury and was causally related to the accident, which caused shearing trauma to the left hip. He opined that appellant required a total left hip replacement due to the employment injury.

By decision dated April 23, 2021, OWCP denied appellant's request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

On May 4, 2021 appellant again requested reconsideration and submitted additional evidence.

In visit notes dated April 22, May 20, and June 17, 2021, Dr. Sharma continued to treat appellant and reiterated his prior diagnosis. He opined that left total hip replacement was medically necessary and referred her to an orthopedic specialist for hip surgery.

By decision dated July 27, 2021, OWCP denied modification.

On July 29, 2021 appellant requested reconsideration and submitted additional evidence, including a May 20, 2021 note from Dr. Sharma that is substantially similar to his March 25, 2021 note.

On October 5, 2021 appellant requested reconsideration and submitted additional evidence.

In a September 13, 2021 report, Dr. Sharma noted that appellant injured her left hip at work while carrying a heavy object and immediately experienced intractable pain in her left hip. He

indicated that she had worked in her position for 15 years and performed repetitive daily lifting and twisting, which caused wear and tear to her left hip. Dr. Sharma opined that diagnostic testing revealed end-stage left hip osteoarthritis and that appellant's diagnosis was a direct and permanent aggravation of her left hip DJD. He further noted that, prior to this injury, she was able to work full time without issues. Dr. Sharma concluded that appellant's left hip osteoarthritis was a direct result of the claimed work injury and causally related to the accident, which caused shearing trauma to her left hip. He further opined that her need for total hip replacement was causally related to the work accident and that the mechanism of injury was twisting and shear forces that caused direct trauma to the hip.

By decision dated October 20, 2021, OWCP denied appellant's request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

On December 9, 2021 appellant, through counsel, again requested reconsideration and submitted additional evidence.

In September 13 and October 14, 2021 visit notes, Dr. Sharma reiterated his prior diagnosis and that appellant required hip replacement surgery. OWCP also received September 14 and October 15, 2021 laboratory test results.

In visit notes dated November 11 and December 6, 2021 and January 6 and February 3, 2022, Dr. Sharma continued to treat appellant and reiterated his prior diagnosis. Appellant also submitted December 10, 2021 laboratory test results.

By decision dated March 7, 2022, OWCP denied modification.

OWCP continued to receive evidence, including a March 3, 2022 visit note from Dr. Sharma noting that appellant continued to experience left hip pain and opining that her work incident caused additional injury to her hip, leaving her unable to work or perform her job duties. He concluded that hip replacement would enable her to resume work. On April 4, 2022 Dr. Sharma treated appellant and reiterated his prior diagnosis.

In an April 14, 2022 report, Dr. Sharma reiterated the findings and opinions from his September 13, 2021 report and further explained that appellant had worked in her position for 15 years and performed repetitive daily lifting and twisting which had caused wear and tear on her left hip. He related that she repeatedly lifted heavy objects as part of her job duties, which required her to twist and rotate her left hip, spine, and pelvis. Dr. Sharma opined that, by lifting heavy objects during the accepted August 4, 2020 employment incident, appellant put excess pressure and additional shearing and tearing forces on her left hip joint, hip capsule, and lip labrum, which caused direct shearing trauma to her hip and aggravated her preexisting osteoarthritis and left hip DJD. He reasoned that, if not for the work accident, she would not be experiencing pain and would be able to work. Dr. Sharma concluded that appellant's left hip osteoarthritis was causally related to and a direct result of the August 4, 2020 employment incident.

On April 27, 2022 appellant, through counsel, requested reconsideration.

By decision dated July 25, 2022, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 timely filed within the applicable time limitation of FECA,⁵ 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.⁶ 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.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused an injury.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 incident identified by the claimant.¹⁰

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.¹¹

⁴ *Supra* note 2.

⁵ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *P.B.*, Docket No. 23-0449 (issued July 28, 2023); *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *M.M.*, Docket No. 23-0475 (issued July 27, 2023); *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

ANALYSIS

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

In his April 14, 2022 report, Dr. Sharma related that appellant had worked in her position for 15 years and performed repetitive daily lifting and twisting which caused wear and tear on her left hip. He opined that, by lifting heavy objects during the accepted August 4, 2020 employment incident, she put excess pressure and additional shearing and tearing forces on her left hip joint, hip capsule, and lip labrum, which caused direct shearing trauma to her hip and aggravated her preexisting osteoarthritis and left hip DJD. Dr. Sharma concluded that appellant's left hip osteoarthritis was causally related to and a direct result of the August 4, 2020 employment incident.

Dr. Sharma provided an affirmative opinion on causal relationship and a pathophysiological explanation as to how the accepted August 4, 2020 employment incident caused appellant's diagnosed medical condition and aggravated her preexisting osteoarthritis. While his report is not completely rationalized to meet appellant's burden of proof to establish her claim, it is sufficient to require OWCP to further development of her claim.¹²

The Board notes that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.¹³ It has an obligation to see that justice is done.¹⁴

The case must, therefore, be remanded for further development of the medical evidence. On remand, OWCP shall refer appellant, a statement of accepted facts and the medical evidence of record to a specialist in the appropriate field of medicine. The referral physician shall provide a rationalized opinion on whether any of the diagnosed conditions are causally related to the accepted employment incident. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale why his or her opinion differs from that of Dr. Sharma. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁵

CONCLUSION

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

¹² *F.U.*, Docket No. 22-1205 (issued January 9, 2023); *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *H.T.*, Docket No. 18-0979 (issued February 4, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2022 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: November 20, 2023
Washington, DC

Patricia H. Fitzgerald, 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