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J.C., Appellant)	
)	
and)	Docket No. 23-0292
)	Issued: March 22, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
Deptford, NJ, Employer)	
)	

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

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

On May 25, 2016 appellant, then a 56-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a hip condition as the physical demands of his position, over a long period of time, aggravated the wear and tear on his body. He indicated that he first became aware of his claimed condition and realized its relation to factors of his federal employment on May 23, 2016. Appellant stopped work on May 23, 2016 and returned to work on May 24, 2016.

By decision dated May 4, 2017, OWCP denied appellant's claim, finding that he had not met his burden of proof to establish that his right hip osteoarthritis was causally related to the accepted factors of his federal employment.

On May 11, 2017 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on August 17, 2017.

OWCP received additional medical evidence. In a May 19, 2016 report, Dr. Jamil Mohsin, a diagnostic radiologist, noted that an x-ray of appellant's right hip found no fracture or misalignment of the right hip and moderate degenerative joint disease.

In a March 31, 2017 report, Dr. Eddie Wu, an osteopathic physician Board-certified in orthopedic surgery, diagnosed symptomatic right hip osteoarthritis, confirmed by x-rays of appellant's right hip. He recounted that appellant continued to perform his usual duties, including prolonged ambulation for 10 miles daily, working six days per week. Dr. Wu explained that there was no inciting injury and opined that "the daily wear and tear of [appellant's] occupation has directly aggravated and worsened his preexisting right hip osteoarthritis."

In an August 8, 2017 report, Dr. Wu reiterated that appellant had preexisting severe degenerative joint disease which was aggravated by his current job duties. He explained that appellant ambulated up to 10 miles per day, five to six days per week, walked on concrete pavement, and ascended and descended steps, which could increase the joint reaction forces in the hip, leading to increased inflammation, effusion, synovitis, and pain. Dr. Wu opined "within a reasonable degree of medical certainty that increased 'wear and tear' on a daily basis can potentially accelerate the progression of his degenerative joint disease." He further opined that appellant's symptoms were "obviously being exacerbated by [appellant's] daily work duties."

By decision dated October 23, 2017, OWCP's hearing representative vacated the May 4, 2017 decision, finding that the medical evidence of record was sufficient to warrant further development of the claim.

³ Docket No. 20-0064 (issued September 4, 2020).

In a letter dated February 7, 2018, OWCP referred appellant for a second opinion examination with Dr. Andrew Newman, a Board-certified orthopedic surgeon.

In a February 22, 2018 report, Dr. Newman noted appellant's history of injury and medical treatment. He diagnosed moderate-to-somewhat severe degenerative joint disease of the right hip due to osteoarthritis. In response to the question as to whether appellant's employment factors during his 32-year career with the employing establishment aggravated his right hip degenerative condition, Dr. Newman opined, "No." He explained that there was "nothing in the literature that in any way connected normal wear and tear and what we are calling osteoarthritis as anything to do with the amount of walking that somebody carries out. Osteoarthritis is commonly seen in all age groups, particularly above 50, as to the hip. People who are almost totally stationary develop this as well as people who do a lot of walking and running, etc." Dr. Newman also responded to Dr. Wu's opinion that "[w]ear and tear on a daily basis can potentially accelerate the progression of degenerative joint disease." He indicated that, "[t]here is nothing that supports this. The fact that anything 'can' is the point that Dr. Wu is making, but certainly with reasonable medical certainty there is no evidence whatsoever that the degenerative joint disease is any way related to [appellant's] walking job." Dr. Newman advised that no further medical treatment was warranted.

By decision dated March 21, 2018, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted employment factors.

On March 26, 2018 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on July 10, 2018.

By decision dated August 13, 2018, OWCP's hearing representative affirmed the March 21, 2018 decision.

On October 15, 2018 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a September 7, 2018 report, Dr. Wu responded to Dr. Newman's second opinion report. He asserted that there was no question that appellant's right hip osteoarthritis was a preexisting condition and that his employment activities "exacerbated" this condition. Dr. Wu explained that appellant's increased hip/groin pain from his osteoarthritis was due to increased frictional forces throughout the joint. He noted that appellant's job duties included walking up to 10 miles per day on concrete floors and going up and down steps which increased friction and joint reaction forces more than two to four times his body weight. Dr. Wu opined that, "[i]ncreased irritation of the synovium and joint reaction forces, as well as increased friction secondary to degenerative joint disease increases the release of proinflammatory markers which directly causes and increases [appellant's] pain."

On January 2, 2019 OWCP determined that a conflict in medical evidence existed between appellant's treating physician, Dr. Wu, and Dr. Newman, the second opinion physician, regarding whether appellant's preexisting degenerative joint disease was aggravated by appellant's federal employment duties. It referred appellant to Dr. Roy B. Friedenthal, a Board-certified orthopedic surgeon, to resolve the conflict.

In a March 18, 2019 report, Dr. Friedenthal, serving as the impartial medical examiner (IME), noted appellant's history of injury and medical treatment. He noted that diagnostic images, including x-rays of the pelvis and left hip, were not submitted for review, and that he did not have the benefit of prior medical records. Dr. Friedenthal examined appellant and opined that there was no relationship between the development of osteoarthritis of the right hip and appellant's work activities. He also advised that, right hip replacement was not causally related to employment activities. Dr. Friedenthal indicated that he would review the diagnostic studies, if further confirmation of his opinion was required.

In a May 6, 2019 supplemental report Dr. Friedenthal noted that he had not received all of appellant's diagnostic studies and medical records.

By decision dated May 16, 2019, OWCP denied modification of its prior decision.

On October 8, 2019 appellant, through counsel, filed a timely appeal from the May 6, 2019 decision.

By decision dated September 4, 2020, the Board set aside the May 16, 2019 decision, finding that the case was not in posture for decision.⁴ The Board found that Dr. Friedenthal's opinion was not based on a complete medical history as he did not have the entire medical record. The Board remanded the case for OWCP to refer the entire medical record to Dr. Friedenthal and request another supplemental opinion.

On remand, OWCP determined that Dr. Friedenthal did not accept electronic files. It, therefore, referred appellant, along with the case record and a SOAF, to Dr. Stanley Askin, a Board-certified orthopedic surgeon, to resolve the conflict.

In a report dated July 16, 2021, Dr. Askin noted appellant's history of injury and treatment. He examined appellant and provided findings. Dr. Askin noted that appellant was status post right total hip replacement for osteoarthritis of the right hip. He also noted that he was asked to resolve the conflict between the opinions of Dr. Wu and Dr. Newman as to whether appellant's right hip condition aggravated his preexisting right hip osteoarthritis. Dr. Askin opined that appellant's osteoarthritis was not causally related to his employment activities. He explained that appellant used both hips when performing his employment duties, but only developed osteoarthritis in his right hip. Dr. Askin further explained that appellant was overweight and opined that this caused the development of osteoarthritis of the weight bearing joints, no matter the occupation. He also noted that, once osteoarthritis develops, then pain is experienced with activity; however, he opined that "experiencing pain and materially causing or worsening the osteoarthritis are distinguishable." Dr. Askin opined that the pain that appellant experienced with employment activities "was a result of developing osteoarthritis, and not the cause of it." He compared appellant's condition to a rusty hinge that would squeak when moved, but the movement was not the cause of the rusty condition of the hinge. Dr. Askin further opined that appellant's employment factors did not aggravate an underlying/preexisting condition, and that he did not consider that appellant's condition was causally related to his employment factors. He also noted that appellant's osteoarthritis was resolved by the total hip replacement and that osteoarthritis of the right hip was no longer present.

⁴ *Id.*

By decision dated September 1, 2021, OWCP denied appellant's claim, finding that Dr. Askin's report constituted the special weight of the evidence as an IME.

On September 9, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on January 14, 2022.

By decision dated March 31, 2022, OWCP's hearing representative vacated the September 1, 2021 decision, finding that Dr. Askin's report required clarification, as it did not provide medical rationale and relied upon generalized literature. The hearing representative remanded the case for OWCP to obtain a supplemental opinion from Dr. Askin clarifying whether appellant's work factors caused or aggravated his hip condition.

In a letter dated April 6, 2022, OWCP requested that Dr. Askin provide medical rationale explaining his opinion with regard to causal relationship.

In an April 7, 2022 report, Dr. Askin explained that osteoarthritis of any joint can develop spontaneously or be caused by trauma or supraphysiologic activities (meaning activities beyond normal human capability). However, he noted that humans are uniquely adapted for long distance ambulatory activities and that the fact that appellant had walked for 10 miles per day was not predictive of developing osteoarthritis. Dr. Askin reiterated his opinion that experiencing arthritic pain once arthritis develops is not an aggravation, whereas an aggravation implies a material disturbance of the underlying condition. He repeated the analogy that appellant's condition is like having a rusty hinge.

By decision dated July 7, 2022, OWCP denied appellant's claim. It found that the reports from Dr. Askin were sufficiently rationalized and carried the special weight of the medical evidence as the impartial medical examiner.

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

⁵ *Supra* note 2.

⁶ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *See G.B.*, Docket No. 19-1510 (issued February 12, 2020); *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *K.V. and M.E., id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

Rationalized medical opinion evidence is required to establish causal relationship.¹⁰ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.¹¹ 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 specific employment factors.¹²

Section 8123(a) of FECA provides in pertinent part: "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."¹³ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist 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.¹⁴

ANALYSIS

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

OWCP referred appellant to Dr. Askin for an impartial medical examination. In a July 16, 2021 report, Dr. Askin opined that appellant's preexisting condition of osteoarthritis of the right hip was not caused or aggravated by his employment duties. However, OWCP's hearing examiner concluded that Dr. Askin's July 16, 2021 report was insufficiently rationalized and remanded the case to OWCP to obtain a supplemental report from Dr. Askin, which he provided on April 7, 2022.

In his July 16, 2021 report, Dr. Askin indicated that he did not believe that appellant's right hip condition was caused by his employment activities, particularly walking for 10 miles per day,

⁹ *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *see also*, *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *L.G.*, Docket No. 20-0433 (issued August 6, 2020); *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

¹¹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹² *Id.*; *Victor J. Woodhams*, *supra* note 9.

¹³ 5 U.S.C. § 8123(a).

¹⁴ *Id.*

because appellant used both hips when walking, but only developed osteoarthritis in his right hip. He attributed the right hip osteoarthritis to appellant being overweight.

While Dr. Askin provided a supplemental report on April 7, 2022, he still failed to provide a sufficiently well-rationalized medical opinion. As noted, the physician's opinion must be supported by medical rationale explaining whether or not a causal relationship exists between the diagnosed condition and appellant's specific employment factors. Dr. Askin's supplemental report relies upon generalized information to the effect that humans are uniquely adapted for long distance ambulatory activities because they have evolved as migratory creatures. Based on this, he opined that appellant's employment activity of walking 10 miles per day was no more predictive of developing osteoarthritis than if he had been a marathon runner. Dr. Askin reiterated his opinion that experiencing arthritic pain once arthritis develops is not an aggravation where aggravation implies a material disturbance of the underlying condition. The Board finds that his supplemental report again relied upon generalized rationale rather than addressing appellant's specific condition and employment factors.¹⁵ In addition to relating that aggravation required a "material" disturbance of the underlying condition, Dr. Askin opined that osteoarthritis could be due to supraphysiologic activities, which he defined as activities beyond normal human capability. The Board has held that any contribution to the diagnosed condition by the accepted employment factors would render the condition compensable. It is not necessary to show a significant contribution by employment factors to establish causal relationship.¹⁶ Dr. Askin did not provide a rationalized medical opinion that ruled out any contribution to appellant's right hip osteoarthritis by the factors of his federal employment. The Board has found that, when an IME fails to provide medical reasoning to support his conclusory statements about a claimant's condition, his opinion is insufficient to resolve a conflict in the medical evidence.¹⁷

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. However, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁸ Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁹

The case must therefore be remanded for further development. As OWCP has already sought clarification from Dr. Askin, on remand OWCP shall refer appellant, together with an updated SOAF and the medical record, to a new IME in the appropriate field of medicine to resolve

¹⁵ *Id.*

¹⁶ *R.G.*, Docket No. 21-0812 (issued February 28, 2022); *F.K.*, Docket No. 19-1804 (issued April 27, 2020); *J.B.*, Docket No. 17-2021 (issued August 8, 2018); *G.G.*, Docket No. 17-0504 (issued August 8, 2017); *Beth C. Chaput*, 37 ECAB 158 (1985) (it is not necessary to show a significant contribution of employment factors to a diagnosed condition to establish causal relationship).

¹⁷ *R.G.*, Docket No. 21-0812 (issued February 28, 2022); *K.C.*, Docket No. 19-1251 (issued January 24, 2020).

¹⁸ See *L.L.*, Docket No. 21-0625 (issued January 17, 2023); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

¹⁹ *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

the conflict in the medical opinion evidence.²⁰ Following this and other such further development deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 7, 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: March 22, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.11(e) (September 2010); *E.N.*, Docket No. 20-1171 (issued April 20, 2022); *R.W.*, Docket No. 18-1457 (issued February 1, 2019); *Harold Travis*, 30 ECAB 1071 (1979).