



## ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work for the period November 23, 2019 through July 1, 2022 causally related to his accepted employment injury.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>4</sup> The facts and circumstances as set forth in the Board's prior order and decision are incorporated herein by reference. The relevant facts are as follows.

On November 20, 2019 appellant, then a 41-year-old city carrier, filed a notice of recurrence claim (Form CA-2a) alleging that on October 25, 2019 he sustained a recurrence of disability, and the need for medical treatment causally related to his accepted January 10, 2018 employment injury.<sup>5</sup> He further explained that his left hip degenerative joint disease was caused by work-related activities including sitting on a folding chair, walking and loading parcels. OWCP converted appellant's recurrence claim to a new occupational disease claim, assigned OWCP File No. xxxxxx572.

Hospital records reflect that on May 4, 2018 appellant underwent arthroscopy of the left hip with resection, labral repair, and shaving/thermal chondroplasty of the acetabulum. The procedure was performed by Dr. Donald Rose, a Board-certified orthopedic surgeon.

In an October 30, 2019 report, Dr. Rose noted that appellant was approximately one year and six months status postoperative left hip arthroscopy. He related appellant's physical examination findings, and noted that appellant had returned to work, but that he was working outside of his recommended restrictions. Dr. Rose noted that appellant's pain occurred when he increased his activities, which was consistent with arthritic changes.

In a November 12, 2019 report, Dr. Craig Capeci, a Board-certified orthopedic surgeon, diagnosed left hip degenerative joint disease. He noted appellant's left hip pain dated back to a January 2018 work injury when he injured his left hip slipping and falling on ice. Dr. Capeci reported that appellant returned to work in September 2019. Appellant stopped work after three weeks as his pain progressively worsened to the point of total disability. Dr. Capeci opined that appellant was currently totally disabled since he could not tolerate long periods of standing, walking and pivoting on his left hip. He explained that appellant's left hip arthritis was due to the 2018 left hip labral tear work injury.

In a development letter dated March 9, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a

---

<sup>4</sup> *Order Remanding Case*, Docket No. 21-1044 (issued March 16, 2022); Docket No. 23-0034 (issued June 22, 2023).

<sup>5</sup> In OWCP File No. xxxxxx514, OWCP accepted appellant's traumatic injury claim (Form CA-1) for a January 10, 2018 left hip sprain and tear, following a slip and fall on ice in the performance of duty. The employing establishment offered appellant a modified limited-duty assignment on September 24, 2019.

questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated May 5, 2020, OWCP denied appellant's occupational disease claim finding that the medical evidence of record was insufficient to establish that the claimed condition was causally related to the accepted employment factors.

On January 11, 2021 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In an August 19, 2020 report, Dr. Capeci summarized appellant's medical treatment from June 4, 2018 through August 19, 2020. He related that appellant's diagnoses included status post left hip arthroscopy with labral repair; cam and pincer resection and chondroplasty; and left hip degenerative joint disease. Dr. Capeci opined that it was reasonable to attribute appellant's left hip degenerative joint disease to the January 10, 2018 employment injury.

By decision dated April 2, 2021, OWCP denied modification.

On June 30, 2021 appellant appealed to the Board.<sup>6</sup> By order dated March 16, 2022, the Board remanded the case to OWCP to administratively combine OWCP File Nos. xxxxxx514 and xxxxxx572, followed by a *de novo* decision. OWCP thereafter administratively combined OWCP File Nos. xxxxxx514 and xxxxxx572, with the former serving as the master file.

OWCP continued to receive medical evidence. In a report dated July 6, 2021, Dr. Capeci recounted appellant's history of injury and his May 2018 left hip labral surgery. He noted that appellant did return to work in September 2019 for three weeks, but then his pain progressed to the point that he was unable to work. Dr. Capeci concluded that appellant had a left hip arthritis, in the setting of a left hip injury and labral tear that happened at work in 2018, and that the concurrent condition was causally related to his work-related injury. On July 22, 2021 appellant was again seen by Dr. Capeci for review of his left hip magnetic resonance imaging (MRI) scan. Dr. Capeci assessed left hip degenerative disease and noted that he had discussed total hip replacement with appellant. He concluded that appellant remained totally disabled from work.

In a report dated February 4, 2022, Dr. Capeci related that appellant had a work injury with a labral tear and chondral damage, which had progressed to arthritis and severe left hip pain. He diagnosed unilateral primary osteoarthritis of the left hip and noted that appellant was awaiting authorization for a left hip replacement.

On May 2, 2022 OWCP referred appellant, along with a statement of accepted facts (SOAF), the case record, and a series of questions, to Dr. Jonathan Paul, a Board-certified orthopedic surgeon, for a second opinion regarding the cause of appellant's current condition and his disability status.

In a report dated June 3, 2022, Dr. Paul noted appellant's history of injury and reviewed the medical evidence of record. He related that OWCP had accepted appellant's prior January 10, 2018 claim for left hip labral tear and sprain. Following the 2018 injury, appellant returned to work for six weeks on light duty before he stopped working. During appellant's return to work,

---

<sup>6</sup> *Order Remanding Case*, Docket No. 21-1044 (issued March 16, 2022).

the employing establishment continually added additional duties to his assignment. Dr. Paul noted appellant's physical examination findings and diagnosed left hip end-stage osteoarthritis, which had been permanently aggravated by 20 years of repetitive motion at work. He opined that appellant was disabled from performing his regular work duties, but that he was capable of performing sedentary work. Dr. Paul recommended that appellant undergo total left hip arthroplasty.

By decision dated June 23, 2022, OWCP accepted appellant's claim for exacerbation of left hip primary osteoarthritis. It paid him wage-loss compensation on the supplemental rolls effective May 19, 2023, and on the periodic rolls effective August 13, 2023.

On July 2, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work for the period November 23, 2019 through July 1, 2022.

In a development letter dated July 18, 2022, OWCP advised appellant that the evidence of record was insufficient to support disability from work during the claimed period. It advised him of the type of medical evidence required and afforded him 30 days to submit the necessary evidence.

In progress notes dated August 9, 2022, Dr. Capeci reiterated his opinion that appellant was disabled due to his left hip labral tear and chondral damage, which had progressed to arthritis.

By decision dated August 18, 2022, OWCP denied appellant's claim for disability from work during the period November 23, 2019 through July 1, 2022.

Appellant appealed to the Board.<sup>7</sup> By decision dated June 22, 2023, the Board set aside the August 18, 2022 decision and remanded the case for OWCP to prepare an updated SOAF and obtain clarification from second opinion physician Dr. Paul as to whether appellant was totally disabled from work during the claimed period November 23, 2019 through July 1, 2022 causally related to his accepted employment injury.

In an August 18, 2023 supplemental report, Dr. Paul opined that appellant was not totally disabled from work during the claimed period November 23, 2019 through July 1, 2022. He explained that appellant's surgical procedure was performed on May 5, 2018 and that seven months was clearly more than enough time for appellant to recover and return to work, if not full duty, then to a light-duty job. According to Dr. Paul, a typical return to work after the surgical procedure appellant underwent would be a return to light duty at six weeks' postoperative (postop).

In a report dated March 5, 2024, Dr. Capeci reported that appellant was progressing well 10 months following his left total hip replacement, with good range of motion and intact strength. He diagnosed status post total left hip replacement. Dr. Capeci concluded that appellant remained disabled.

On March 8, 2024 the employing establishment offered appellant a temporary modified city carrier position working four hours per day. Appellant accepted the position and returned to part-time, light-duty work on April 8, 2024.

---

<sup>7</sup> Docket No. 23-0034 (issued June 22, 2023).

In a supplemental report dated July 9, 2024, Dr. Paul related that he had been provided additional medical records and had been asked to address whether appellant was totally disabled from work during the period November 23, 2019 through July 1, 2022, due to his accepted employment injury. He related that in the prior addendum dated August 18, 2023 that he had been asked the same question. Dr. Paul again explained that appellant's surgery had been performed on May 4, 2018, and seven months was clearly more than enough time for appellant to recover to return to at least light-duty work. A typical return following the procedure would be a return to light duty at six weeks' postop.

By decision dated August 16, 2024, OWCP denied appellant's claim for disability from work during the period November 23, 2019 through July 1, 2022. It accorded the weight of the medical evidence to Dr. Paul.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.<sup>11</sup>

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.<sup>12</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment and he or she is entitled to compensation for any loss of wages.<sup>13</sup>

To establish causal relationship between the disability claimed and the accepted employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.<sup>14</sup> The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale

---

<sup>8</sup> *Supra* note 2.

<sup>9</sup> See *T.T.*, Docket No. 22-0632 (issued November 16, 2022); *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).

<sup>10</sup> See *T.T.*, *id.*; *M.B.*, Docket No. 18-1455 (issued March 11, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

<sup>11</sup> See 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>12</sup> *Id.* at § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>13</sup> See *T.T.*, *supra* note 9; *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>14</sup> See *T.T.*, *id.*; *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

explaining the nature of the relationship between the claimed disability and the accepted employment injury.<sup>15</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period November 23, 2019 through July 1, 2022 causally related to his accepted employment injury.

In his supplemental reports dated August 18, 2023 and July 9, 2024, Dr. Paul explained that appellant was not totally disabled during the period in question. He explained that seven weeks was enough time to recover from the type of surgical procedure appellant underwent, and therefore appellant had enough time following his surgery on May 5, 2018 to return to work, if not full duty then light-duty work. The Board finds that his reports were well rationalized and were based on an accurate history of injury.<sup>16</sup> Accordingly, the Board finds that Dr. Paul's second opinion reports constitute the weight of the medical evidence.

Following the Board's June 22, 2023 decision, OWCP received reports from Dr. Capeci. He related that appellant was status post total left hip replacement and he concluded that appellant remained disabled. Dr. Capeci's reports, however, did not address the relevant issue of whether appellant was disabled from work for the period November 23, 2019 through July 1, 2022 due to his accepted October 25, 2019 employment injury.<sup>17</sup> 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.<sup>18</sup> Therefore this evidence is insufficient to overcome the weight accorded to second opinion physician Dr. Paul, or to create a conflict in medical opinion.<sup>19</sup>

As the medical evidence of record is insufficient to establish disability from work for the period November 23, 2019 through July 1, 2022 causally related to the accepted employment injury, the Board finds that appellant 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

---

<sup>15</sup> *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>16</sup> *See J.R.*, Docket No. 20-0292 (issued June 26, 2020); *C.J.*, Docket No. 18-0148 (issued August 20, 2018).

<sup>17</sup> *See K.E.*, Docket No. 19-1922 (issued July 10, 2020).

<sup>18</sup> *See F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>19</sup> *D.L.*, Docket No. 22-0161 (issued March 10, 2023).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish disability from work for the period November 23, 2019 through July 1, 2022 causally related to his accepted employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 16, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2025  
Washington, DC

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

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

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