

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERNARD E. BAHLEDA and U.S. POSTAL SERVICE,
POST OFFICE, Draversburg, PA

*Docket No. 01-302; Submitted on the Record;
Issued January 18, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that his left hip osteoarthritis is causally related to factors of his employment.

On July 7, 1998 appellant, then a 48-year-old letter carrier, filed a claim alleging that his left hip osteoarthritis was caused by overuse from carrying a mail route for 17 years. Appellant stopped work on January 10, 1998 for an unrelated health problem.

By letter dated July 27, 1998, the Office of Workers' Compensation Programs advised appellant that the information he had submitted was insufficient to establish that he sustained an injury as alleged. The Office requested that appellant submit medical records pertaining to his condition including copies of all treatment notes and test results related to his claimed condition and a comprehensive medical report from his treating physician which describes his symptoms and the doctor's opinion, with medical reasons, on the cause of his condition including an explanation if the doctor feels that incidents in his federal employment contributed to his condition. The Office asked appellant to describe in detail the employment-related activities which he believed contributed to his condition.

In a report dated July 23, 1998 and received by the Office on August 3, 1998, Dr. Arnold S. Broudy, appellant's treating physician and Board-certified in orthopedic surgery, stated that appellant complained initially of pain in his left hip on June 1, 1998, and that x-rays taken at that time revealed a narrowing of the joint space of the left hip with obvious osteoarthritis and spurring. Upon examination, he noted flexion of 110 degrees, full left hip extension, abduction was 80 degrees, and with hip and both knees flexed 90 degrees, external rotation was 50 degrees and internal rotation was 30 degrees. He added:

“[Appellant] has osteoarthritis of the left hip. He works in a position which requires him to do a lot of steps and is constantly on his left foot. It appears that his job has aggravated a preexisting condition. The osteoarthritis was not caused by his job but has been aggravated by the repetitive walking, stair climbing,

kneeling, etc. I state this position with a reasonable degree of medical certainty. I have advised [appellant] that he should try to obtain placement into an inside position where he does not have to be on his feet all day long and avoid steps.”

In a report dated August 7, 1998, Dr. Broudy stated that appellant’s osteoarthritis developed over many years and is a long-standing problem. He noted that his condition will “persist indefinitely,” but that the symptoms can improve if he avoided carrying heavy objects and walking up and down stairs.

By decision dated September 24, 1998, the Office denied appellant’s claim on the grounds that the medical evidence was insufficient to establish that his condition was caused by his employment.

By letter dated September 20, 1999, appellant requested reconsideration. In support of his request, he submitted an October 26, 1998 report from Dr. Broudy who stated that appellant’s employment factors, carrying a heavy bag, walking up and down stairs frequently for 18 years aggravated a preexisting osteoarthritis condition of the left hip. In a report dated June 2, 1999, Dr. Broudy stated that appellant was symptomatic with pain in his left hip, that recent x-rays revealed some subluxation and cystic changes on both sides of the left hip joint and that his condition was getting progressively worse.

Appellant also submitted a September 17, 1999 report from Dr. Michael Levine, Board-certified in orthopedic surgery, who stated that he had examined appellant as a referral from Dr. Broudy. He noted his findings and stated that there was no work-related injury *per se*, but that appellant’s work “would aggravate the osteoarthritis in terms of subjective symptomology.” Dr. Levine noted that appellant’s osteoarthritis preexisted “other etiologies,” but was aggravated by his work as a mail carrier. He recommended that appellant be placed in a light-duty position “so that the osteoarthritis would not be aggravated.”

On October 8, 1999 the Office referred appellant, his medical record and a statement of accepted facts to Dr. Charles S. Stone, a second opinion physician Board-certified in orthopedic surgery, for a determination of whether his left hip condition was causally related to his employment. The Office asked whether the diagnosed condition was medically connected to factors of employment either by direct cause or aggravation. In a report dated November 2, 1999, Dr. Stone considered appellant’s history of injury, performed a physical examination and reviewed x-rays taken on May 29, 1998 and June 1, 1999 of appellant’s left hip. Examination findings of the left knee were flexion contracture, with range of motion from 25 to 110 degrees, abduction was 40 degrees, internal rotation was 5 degrees, external rotation was 35 degrees. Dr. Stone noted a two centimeter decrease in girth of the right thigh as compared to the left, and that his peripheral pulses in the lower extremities were normal and a neurologic defect in the lower extremities. He diagnosed appellant with osteoarthritis of the left hip which was naturally occurring, and which had become progressively more severe since June 1998. Dr. Stone stated: “I find no evidence that the left hip condition is causally related to his duties as a letter carrier.” In answer to the Office’s question of whether appellant’s condition was aggravated by his employment, the doctor stated that “[t]he condition is preexisting and not work related.”

By decision dated November 9, 1999, the Office reviewed the merits of the case and found that the evidence was not sufficient to warrant modification of its prior decision.

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

Under the Federal Employees' Compensation Act,¹ when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.² When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased,³ even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying condition.⁴

In this case, appellant presented medical evidence that his osteoarthritis was aggravated by his employment. The Office then referred the case to a second opinion physician with specific questions regarding whether appellant's accepted osteoarthritis condition was either caused or aggravated by employment. Dr. Stone, the second opinion physician, noted in his report only that appellant's condition was preexisting and that it was not caused by employment. The Board notes that Dr. Stone failed to address whether appellant's condition was aggravated by his employment and, if so, whether the aggravation was temporary. The Office should request a follow-up report from the second opinion physician in this case, specifically requesting an opinion on whether appellant's left hip osteoarthritis was aggravated by his employment. Alternatively, the Office may refer the case to another second opinion physician for review.⁵

¹ 5 U.S.C. §§ 8101-8193.

² *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

³ *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁴ *John Watkins*, 47 ECAB 597 (1996); *Marion Thornton*, 46 ECAB 899, 906 (1995).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.5 (June 1995).

The decision of the Office of Workers' Compensation Programs dated November 9, 1999 is hereby vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
January 18, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member