

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

C.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Grand Rapids, MI, Employer)

**Docket No. 08-599
Issued: July 14, 2008**

Appearances:
Jennifer Amos, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 20, 2007 appellant filed a timely appeal of a November 28, 2007 decision of the Office of Workers' Compensation Programs which denied his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he developed a right hip condition while in the performance of duty.

FACTUAL HISTORY

This is the second appeal in this case. In a November 7, 2007 decision, the Board set aside the May 25, 2006 Office decision and remanded the case. The Board found that the Office erred in not conducting a merit review following appellant's request for reconsideration. The Board instructed the Office to conduct a merit review of the evidence from appellant's treating

physician, Dr. Gregory J. Golladay, a Board-certified orthopedic surgeon.¹ The facts and circumstances of the case are set forth in the Board's prior decision and incorporated herein by reference.²

The evidence relevant to this appeal includes a July 26, 2004 report from Dr. Don H. Powell, an osteopath, who treated appellant for low back and radicular pain in his buttocks and leg that developed when he was sorting mail and lifting packages at work. Dr. Powell diagnosed sudden onset of back pain. An October 14, 2004 bone scan of the hips revealed abnormal activity in the right femoral neck region which was attributed to bursitis, avascular necrosis of the femoral head or a stress reaction to an old injury. In a November 12, 2004 report, Dr. James R. Ellis, a Board-certified physiatrist, treated appellant for right hip pain. He noted that appellant sustained a work-related lifting injury in July 2004 causing a back injury that had resolved. Dr. Ellis diagnosed right hip pain which preexisted the July 26, 2004 injury and left-sided patellofemoral pain.

Appellant submitted reports from Dr. Golladay dated January 14 and February 11, 2005. Dr. Golladay diagnosed right hip pain contusion, mechanical stress reaction on the femoral head, early osteoarthritis and trochanteric bursitis. In a January 14, 2005 return to work slip, he diagnosed bursitis and hip contusion. On May 6, 2005 Dr. Golladay treated appellant for right hip pain which occurred after prolonged standing and twisting at his job. He diagnosed persistent right hip pain with mechanical stress reaction. Dr. Golladay also indicated that appellant's lumbar strain was directly related to twisting and bending at his job which caused an alteration in gait mechanics and was related to the stress syndrome that developed in the femoral neck and the underlying degenerative arthritis in the hip. On March 1, 2006 he reiterated that appellant's hip condition was secondary to the gait alteration from his lumbar strain that occurred on July 26, 2004. On May 9, 2006 Dr. Golladay diagnosed hip pain, hip joint effusion, stress reaction in the femoral neck and difficulty walking. He indicated that appellant's hip joint arthritis was separate, but probably aggravated by his lumbar strain. Dr. Golladay could not comment on appellant's gait because he had not examined him recently. As of last examination, appellant complained of hip pain. Dr. Golladay provided a work restriction evaluation.

In a March 20, 2005 report, Dr. David Galluch, a Board-certified physiatrist, noted appellant's nine-month history of right hip pain with no traumatic or infectious etiology. He diagnosed femoral neck stress reaction and noted that appellant's right hip pain had dramatically improved over the last month.

In a November 28, 2007 decision, the Office denied modification of the September 22, 2005 decision finding that the medical evidence was insufficient to establish that appellant's right hip condition was causally related to his federal employment.

¹ On January 18, 2005 appellant, then a 39-year old clerk, filed an occupational disease claim, alleging that he developed a right hip condition while lifting packages. He became aware of his condition on July 26, 2004. Appellant stopped work on January 18, 2005. He filed a separate claim for a lumbar injury occurring on July 26, 2004 which was accepted by the Office for a lumbar strain, claim number 09-2049438.

² Docket No. 07-669 (issued November 7, 2007).

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or his claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factors identified by the claimant.⁴

ANALYSIS

On January 18, 2005 appellant filed an occupational disease claim alleging that he developed a right hip condition while lifting packages at work. The evidence supports that appellant lifts packages and sorts mail at the employing establishment. However, the medical evidence is insufficient to establish that lifting packages and sorting mail caused or aggravated his right hip condition.

On July 26, 2004 Dr. Powell treated appellant for low back and radicular pain in his buttocks and leg that developed when he was sorting mail and lifting packages at work. He diagnosed sudden onset of back pain. However, Dr. Powell failed to address how appellant's hip condition was causally related to his work duties. Rather, he attributed appellant's condition to another work-related injury accepted for a lumbar strain. In a November 12, 2004 report, Dr. Ellis treated appellant for right hip pain. He noted that appellant had a work-related lifting injury in July 2004 which caused a back injury which had resolved. Dr. Ellis diagnosed right hip

³ *Gary J. Watling*, 52 ECAB 357 (2001).

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

pain which preexisted the July 26, 2004 injury and left-sided patellofemoral pain. This report is insufficient to establish appellant's claim as the physician did not explain how appellant's employment activities caused or aggravated his diagnosed right hip condition.⁵

Appellant submitted diagnostic test findings and reports from Dr. Golladay for treatment of right hip pain. Dr. Golladay diagnosed right hip pain contusion, mechanical stress reaction on the femoral head, early osteoarthritis and trochanteric bursitis. However, he did not specifically address how appellant's employment activities caused or aggravated the diagnosed medical conditions. On May 6, 2005 Dr. Golladay treated appellant for right hip pain and obtained a history of prolonged standing and twisting at his job. He diagnosed persistent right hip pain with mechanical stress reaction. Dr. Golladay supported causal relationship in a conclusory statement. However, he did not provide a rationalized narrative opinion regarding the causal relationship between appellant's right hip condition and stating and twisting allegedly to have caused or contributed to his condition.⁶ Dr. Golladay did not explain the process by which repetitive twisting and bending would cause the diagnosed hip condition or why such condition would not be due to other nonwork factors, such as degenerative disease.

In reports dated May 27, 2005 to March 1, 2006, Dr. Golladay again noted right hip pain, trochanteric bursitis and a stress injury to the femoral neck caused by a twisting injury on July 26, 2004. He stated that appellant's lumbar strain on July 26, 2004 caused an alteration in his gait mechanics and was related to the stress syndrome that developed in his femoral neck and degenerative arthritis in the hip. On May 9, 2006 Dr. Golladay indicated that appellant's hip joint arthritis was a separate condition, but was probably aggravated by his lumbar strain. These reports do not establish that appellant's hip condition is due to repetitive employment factors. Dr. Golladay stated that appellant's hip condition was probably aggravated by his lumbar strain and noted that it was not unusual for an acute injury to unmask or exacerbate the symptoms of arthritis. These reports are insufficient to meet appellant's burden of proof as they do not adequately explain how appellant's work duties could contribute to his underlying degenerative disease process or to the development of his hip condition.

Dr. Galluch noted appellant's nine-month history of right hip pain. He diagnosed femoral neck stress reaction and stated that appellant's right hip pain had dramatically improved over the last month. However, Dr. Galluch did not specifically address how appellant's employment activities caused or aggravated his diagnosed right hip condition.⁷ He merely opined that the right hip pain had no traumatic or infectious etiology.

The remainder of the medical evidence, including an x-ray of the lumbar spine dated May 23, 2006, fails to provide an opinion on the causal relationship between appellant's job

⁵ *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁶ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁷ *See A.D.*, *supra* note 5.

duties and his diagnosed conditions. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor is the belief that his condition was caused, precipitated or aggravated by his employment sufficient to establish causal relationship.⁸ Causal relationship must be established by rationalized medical opinion evidence. The Office therefore properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has not established that he developed a right hip condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 28, 2007 is affirmed.

Issued: July 14, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁸ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).