

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

M.S., Appellant)	
)	
and)	Docket No. 15-1464
)	Issued: August 22, 2016
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Washington, DC, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 29, 2015 appellant filed a timely appeal from a June 2, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish development of a right inguinal hernia in the performance of duty.

FACTUAL HISTORY

On March 17, 2015 appellant, then a 46-year-old transportation security officer, filed an occupational disease claim (Form CA-2) alleging that he sustained a recurrent right inguinal hernia on or before November 10, 2014 in the performance of duty. He noted that in 2012,

¹ 5 U.S.C. § 8101 *et seq.*

OWCP accepted a prior right inguinal hernia and surgical repair under File No. xxxxxx315. Appellant explained that he first filed a recurrence claim for the November 10, 2014 injury under File No. xxxxxx315, but OWCP instructed him to file a new claim. He stopped work on February 5, 2015, noting that he first realized that his condition was employment related on that date.

In a March 31, 2015 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including a description of the work factors believed to have caused the claimed condition and a narrative report from his attending physician explaining how and why those incidents would cause the claimed hernia. It afforded him 30 days to submit such evidence.

Appellant responded by April 11, 2015 letter, describing the onset of right inguinal pain and bulging while at work on November 10, 2014. He asserted that lifting bags weighing up to 80 pounds, bending, and twisting at work over a 10-year period caused the accepted hernia in 2012, as well as the November 10, 2014 recurrence. Appellant provided a February 11, 2015 operative note from Dr. Jonathan Chun, an attending Board-certified colon and rectal surgeon, who performed an open repair of a right inguinal hernia. Dr. Chun diagnosed a recurrent right inguinal hernia at the site of the 2012 repair.² He confirmed that appellant had an extremely large right inguinal hernia repaired in open fashion in 2012. Dr. Chun found a blowout of the floor of the inguinal canal as there was very weak tissue medially. The procedure required a long inguinal incision made in the right groin crease at the site of his previous surgical scar. The issue of causation was not specifically addressed in the operative report.

By decision dated June 2, 2015, OWCP denied the claim as causal relationship was not established. It accepted that the tasks appellant described occurred at the times, places, and in the manners alleged. OWCP found, however, that appellant did not provide sufficient medical evidence supporting that lifting, bending, and twisting at work caused the recurrent right inguinal hernia.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 filed within the applicable time limitation, that an injury was sustained while 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.⁵ To establish that an injury was sustained in

² Appellant also submitted claims for compensation (Form CA-7) for the period February 8 to March 28, 2015.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ 20 C.F.R. § 10.5(q).

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) 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 the 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.⁶

OWCP's definition of a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure. The term also means the inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁷

ANALYSIS

Appellant claimed development of a recurrent right inguinal hernia on or about November 10, 2014, causally related to lifting, bending, and twisting at work. OWCP accepted that the described work factors occurred as alleged, but denied the claim as the medical evidence did not establish a causal relationship between those factors and the claimed hernia.

In support of his claim, appellant submitted a February 11, 2015 operative note from Dr. Chun, an attending Board-certified colon and rectal surgeon. Dr. Chun diagnosed a recurrent right inguinal hernia at the site of a 2012 hernia repair accepted under File No. xxxxxx315. He noted a blowout of the floor of the inguinal canal as there was very weak tissue medially and the operative incision was placed at the site of his previous surgical scar.

OWCP advised appellant by March 31, 2015 letter of the necessity of providing a narrative report from his attending physician with medical rationale supporting causal relationship, to which he did not provide a response.

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

⁷ See *John I. Echols*, 53 ECAB 481 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

The Board finds that before a proper adjudication can be made as to the November 10, 2014 claim, the occupational and traumatic injury case files must be combined. The Board notes that both claims involve a right inguinal hernia condition, the same treating physician has referenced in his notes the prior hernia and its surgical correction, and the most recent surgical repair was at the same location as the prior repair. Combining the claims will aid in review and adjudication of the medical issues. Following the consolidation of the two files, OWCP should thereafter secure a medical report that is based on a complete factual and medical background, with an opinion as to whether appellant sustained a recurrence of disability of his right inguinal hernia or a new injury causally related to the accepted employment factors performed on or about November 10, 2014. After such further development as OWCP finds necessary, it should issue a *de novo* decision.

On appeal, appellant contends that OWCP improperly denied his claim both as a recurrence and as a new injury. He asserts that Dr. Chun characterized the November 10, 2014 hernia as a recurrence of the hernia repaired in 2012. The Board finds that consolidation of the files and further development of the claim is necessary.

CONCLUSION

The Board finds that the case is not in posture for decision and is remanded to OWCP for further development.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 2, 2015 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: August 22, 2016
Washington, DC

Christopher J. Godfrey, 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