United States Department of Labor
Employees' Compensation Appeals Board

G.C., Appellant	)	
and	)	**Docket No. 16-0666**
	)	**Issued: March 17, 2017**
U.S. POSTAL SERVICE, COUNTY LINE ANNEX, Hallandale, FL, Employer	)	

Appearances:
Daniel B. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 22, 2016 appellant, through counsel, filed a timely appeal from an October 22, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to the Federal Employees' Compensation Act[3] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] Appellant timely requested an oral argument before the Board, pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated October 7, 2016, the Board denied appellant's request, finding that the issue could adequately be addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 16-0666 (issued October 7, 2016).

[3] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has established bilateral hip conditions causally related to factors of his federal employment.

On appeal counsel contends that the substance of a June 25, 2015 medical report established that appellant's hip injury was causally related to factors of his federal employment, but that this report was ignored. He also contends that OWCP's claims examiner made inappropriate medical observations.

FACTUAL HISTORY

On July 15, 2015 appellant then a 58-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he suffered an acceleration of osteoarthritis in both hips as a result of his federal employment duties. He stopped work on March 30, 2015. In an attached statement, appellant indicated that he first noted lower back pain in early 2009, that the pain progressed, that he had a left hip replacement in May 25, 2012, and that he was told at that time that his right hip was showing signs of deterioration. He noted that he had been a letter carrier since 1981, and that his duties included standing and sorting mail in the morning, which involved bending, lifting, pivoting, and twisting. Appellant noted that, while he delivered the mail, constantly entering and exiting his vehicle involved bending, twisting, and lifting trays and tubs weighing 5 to 20 pounds. He noted that he lifted and delivered packages weighing 5 to 70 pounds while ascending stairs. Appellant stated that these duties were performed on a daily basis for approximately 8 to 12 hours a day.

The employing establishment controverted his claim. In a letter dated July 29, 2015, it alleged, *inter alia*, that causal relationship to employment factors had not been established.

By letter dated August 3, 2015, OWCP informed appellant that the documentation received was insufficient to support his claim. It explained that further medical evidence was necessary to support his claim and afforded him 30 days to submit additional evidence.

In response to OWCP's letter, appellant submitted progress notes from Dr. Kenneth W. Taylor, a Board-certified orthopedic surgeon. In a February 10, 2011 report, Dr. Taylor noted onset of pain in the left hip, none in the right hip. He indicated that the onset was gradual. Dr. Taylor noted that appellant's left hip was painful to internal and external rotation, and motion was limited compared to the right hip. He opined that appellant would need a total hip arthroplasty in the future.

In a February 3, 2011 report, Dr. Zenobia Miro-Berkeley, a Board-certified internist, diagnosed left hip pain. In a February 25, 2011 follow-up report, she noted that appellant had left hip arthritis and could need a hip replacement in the future. In an April 18, 2011 report, Dr. Miro-Berkeley noted that appellant had left hip pain with ambulation. In a September 25, 2011 report, she again noted left hip arthritis.

In a March 27, 2012 report, Dr. Taylor noted that appellant continued to experience pain in his left hip, that he was limping, and that it was affecting his activities of daily living. He noted that prior x-rays showed end-stage hip arthritis. Dr. Taylor also indicated in his physical

examination findings that appellant's left leg was .5 centimeters shorter than the right. In a May 25, 2012 operative report, he noted that he performed a left total hip arthroplasty. In a September 11, 2014 report, Dr. Taylor noted that he evaluated appellant's bilateral hip conditions. He stated that appellant had a left hip replacement in 2012 and was doing reasonably well. Dr. Taylor noted that appellant's job involved a significant amount of standing. He diagnosed degeneration, hip/pelvic region and thigh. Dr. Taylor opined that appellant had arthritic changes in the right hip and may need to limit work activities. He noted that appellant would ultimately need right hip arthroplasty.

In reports dated December 8 and 22, 2014, Dr. William B. Wiley, a Board-certified orthopedic surgeon, noted no significant changes in appellant's symptoms. He noted that appellant presented with his chief complaint of pain in his right hip and lower spine. Appellant's symptoms were made worse with activity and walking. Dr. Wiley indicated that radiographs of the involved right hip revealed loss of joint space, osteophyte formation and the acetabulurn and femoral head, subchondral cyst formation, and sclerosis of subchondral bone all indicative of degenerative joint disease. Appellant listed his impressions as low back pain with sprain/strain, lumbar spine, and right hip pain with degenerative joint disease in the hip and pelvis.

In a January 30, 2015 report, Dr. Justin W. Kung, a radiologist, indicated that right hip imaging taken on June 8, 2014 demonstrated joint space narrowing of the right hip with a joint space interval of two millimeters He noted that this was consistent with moderate degenerative change. Dr. Kung also noted a left total hip arthroplasty.

In a June 25, 2015 report, Dr. Jeffrey L. Katzell, an orthopedic surgeon, noted that appellant's left hip complaints dated back to 2010, and occurred with walking, squatting, twisting, and kneeling in the scope of his employment. He discussed appellant's medical treatment and listed his job duties. Dr. Katzell noted that his job required that appellant stand for one to two-and-a half hours, and that he engage in continuous bending, lifting, pivoting, and twisting, to take mail from one container to another. He stated that appellant had been on routes that required repetitive motions, climbing in and out of mail vehicles, lifting mail tubs that weighed 5 to 20 pounds and packages that weighed 5 to 70 pounds, ascending and descending stairs, uneven surfaces, and hills. Appellant's duties also required that he squat, twist, and kneel. Dr. Katzell indicated that appellant performed these activities for 8 and 12 hours a day. He noted that appellant was currently on sick leave as he was unable to stand. Dr. Katzell performed a physical examination. He indicated that appellant had both hips replaced, but that his hips were in poor condition. Dr. Katzell stated that appellant walked with a Trendelenburg gait and had a very difficult time with single-leg stance. He noted that both of appellant's hips exhibited significant motion deficits. Dr. Katzell noted that appellant's leg lengths were equal. He found that appellant had a varus deformity to both knees with medial joint line tenderness greater than retropatellar tenderness. Dr. Katzell noted that he reviewed appellant's x-rays of both hips, which showed a fairly advanced arthritic degenerative process. He indicated that appellant had motion deficits, which had not improved.

Dr. Katzell opined that appellant's employment-related exposure was a major contributing factor to his left hip arthritis and ultimate hip replacement with suboptimal outcome, as well as right hip arthritis with pending surgical intervention. He noted that appellant's job required constant and repetitive walking, squatting, stooping, climbing, bending, lifting, carrying, stair climbing, and twisting activities. Dr. Katzell explained that excessive impact

exerted repeated local stresses which resulted in chronic inflammation, which caused a loss of proteoglycans which were responsible for cartilage resilience. This loss resulted in a stiffer material that was more easily damaged by wear and tear. Dr. Katzell noted that published occupational medicine research had shown that the early onset of osteoarthritis was more often in heavy labor occupations where premature wearing out of the joints was more common. He noted that osteoarthritis was no longer considered a natural disease of aging as recent research over the past 15 years had completely discredited this once prevalent theory. Dr. Katzell concluded that current medical research supported appellant's case because he sustained objective, documented progression of his osteoarthritis during the time period in which he was engaging in the offending job duties that exerted repeated local stresses, and were contributing factors to the development and progression of lower extremity arthritis through a process of chronic inflammation as described.

In a telephone note dated October 22, 2015, OWCP's claims examiner indicated that she had called and had spoken with the employing establishment officials to inquire about the route that appellant was currently working. She noted that she was told most routes did not require heavy lifting and were drive up and deliver routes. The claims examiner noted that appellant had worked Route 8104 since November 29, 2007 and that his route did not require him to walk stairs. Most of appellant's stops were to buildings with front desk drop-offs or mail slots.

By decision dated October 22, 2015, OWCP denied appellant's claim. The claims examiner determined that appellant had experienced the alleged employment factors and that he had been diagnosed with bilateral arthritis and degenerative joint disease of his hips, but had failed to provide medical evidence establishing causal relationship between the accepted employment factors and the accepted medical diagnosis.

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 timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[4] 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.[5]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.[6] To establish fact of injury in an occupational disease claim, an employee must submit: (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

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *See S.P.*, 59 ECAB 184, 188 (2007).

condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[7]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.[8]

ANALYSIS

OWCP determined that appellant had established the alleged factors of federal employment, and that he suffered from arthritis and degenerative joint disease in his hips. However, it further determined that appellant failed to establish causal relationship between the accepted factors of his federal employment and his diagnosed hip condition. Accordingly, OWCP denied appellant's claim. The Board finds that the case is not in posture for decision

Dr. Katzell opined that appellant's employment-related exposure was a major contributing factor to his left hip arthritis, ultimate hip replacement, and suboptimal outcome, as well as his right hip arthritis and pending surgical intervention. He noted that appellant's job required constant and repetitive walking, squatting, stooping, climbing, bending, lifting, carrying, stair climbing, and twisting activities. Dr. Katzell explained that excessive impact exerted repeated local stresses which resulted in chronic inflammation, which caused a loss of proteoglycan. He indicated that impact loading and local stresses arising from repetitive motion activities contributed to the development and progression of lower extremity arthritis.

Although Dr. Katzell's report does not contain rationale sufficient to completely discharge appellant's burden of proof, his report constitutes substantial, uncontradicted evidence in support of appellant's claim provides sufficient rationale to require further development of the case record by OWCP.[9]

The Board notes initially that the medical reports of Drs. Taylor, Miro-Berkeley, Wiley, and Kung did not discuss causation. As these physicians did not provide an opinion on causation, their opinions are insufficient to meet appellant's burden of proof.[10]

[7] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

[8] *I.J.*, 59 ECAB 408 (2008); *supra* note 5.

[9] *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978); *See also Noreen A. Gruebel*, Docket No. 03-0203 (issued September 22, 2004).

[10] *See G.M.*, Docket No. 14-2057 (issued May 12, 2015).

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of evidence to see that justice is done.[11]

On remand OWCP should refer appellant, the case record, and a statement of facts to an appropriate specialist for an evaluation and a rationalized medical opinion on whether the accepted factors of his employment caused or contributed to his diagnosed medical conditions. After such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 22, 2015 is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 17, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[11] *William J. Cantrell*, 34 ECAB 1223 (1983); *see also A.P.*, Docket No. 14-221 (issued April 15, 2014).