

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

R.R., Appellant	)	
	)	
and	)	Docket No. 24-0624
	)	Issued: July 29, 2024
U.S. POSTAL SERVICE, EL PASO POST OFFICE, El Paso, TX, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On May 21, 2024 appellant, through counsel, filed a timely appeal from an April 17, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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 an 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the April 17, 2024 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a right hip condition causally related to the accepted factors of his federal employment.

## FACTUAL HISTORY

On July 20, 2023 appellant, then a 38-year-old clerk/special delivery messenger, filed an occupational disease claim (Form CA-2) alleging that his sciatica, pinched nerves, bulging disc and need for hip surgery were due to factors of his federal employment, including lifting, loading, sorting and pushing mail for over 10 years, for 40 hours or more a week. He noted that he first became aware of his condition on June 29, 2023, and realized that his condition was caused or aggravated by factors of his federal employment on July 18, 2023. The employing establishment indicated that appellant stopped work on July 16, 2023, and first reported his condition on July 20, 2023.

In a July 21, 2023 statement, L.G., manager, customer services, denied that neither she nor the previous manager, L.R. had any knowledge of any accident or injury involving appellant.

In a July 27, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required, and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond. No response was received.

In a follow-up letter dated August 16, 2023, OWCP advised appellant that it had performed an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the July 27, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

In an August 23, 2023 statement, appellant described the work duties he performed for the previous 10 years, working 40 hours or more five to six days a week.

OWCP, thereafter, received a June 19, 2023 right hip magnetic resonance imaging (MRI) scan which related findings of avascular necrosis of the right femoral head with associated articular surface collapse; subchondral fracture with moderate bone marrow edema extending to the intertrochanteric region; large hip joint effusion; and small intrasubstance tear of the anterior superior and superior labrum.

In an August 9, 2023 report, Dr. Cheryl L. Ledford, a Board-certified orthopedic surgeon, indicated that appellant injured his right hip on June 29, 2023. She recounted that appellant reported that he lifted heavy boxes and containers of mail at work, and that he awoke one morning and felt pain at the top side of his hip. Dr. Ledford noted that appellant stopped physical therapy after Dr. Jeffrey Annabi, a pain medicine specialist, saw the MRI results of the hip/lumbar and sacroiliac. She also noted that appellant had returned to work with restrictions August 1, 2023. Dr. Ledford diagnosed avascular necrosis of the head of right femur, and pain in right hip joint. In an August 9, 2023 duty status report (Form CA-17), she provided work restrictions.

In an August 23, 2023 report, Dr. Thomas E. Alost, an orthopedic surgeon, reported that on June 29, 2023 appellant was lifting heavy boxes and containers and the next day he had pain in his hip and groin. He reviewed an August 15, 2023 right hip x-ray and right hip MRI scan and provided examination findings. Dr. Alost diagnosed avascular necrosis of the head of right femur and recommended a core decompression of right hip. He opined that appellant could perform regular work. Dr. Alost also provided an August 23, 2023 surgery/procedure order for a core decompression of hip due to avascular necrosis of the head of right femur.

In an undated note, Eduardo Gonzalez, a certified family nurse practitioner, indicated appellant could resume a full workload effective August 15, 2023.

By decision dated September 28, 2023, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the diagnosed medical conditions were causally related to the accepted work event(s).

In a September 28, 2023 report, Dr. Alost indicated that on September 22, 2023 appellant underwent core decompression with injection of allograft putty, in the right hip. He provided postsurgical examination findings and referred appellant to physical therapy.

In an October 18, 2023 report, Dr. Alost noted that appellant was working light duty. He related that appellant initially injured himself on June 28, 2023, when he lifted boxes weighing approximately 70 pounds at work, and immediately felt a sharp pain in his hip and reported the injury. Dr. Alost opined that the right hip injury was directly related to the repetitive heavy lifting of boxes at work. He stated that appellant felt a pop in his right hip when lifting, and from that time his hip pain progressed. Dr. Alost explained that the pop in the hip was a microfracture of the femoral head which then led to bone death and failure to heal. Thus, he concluded that appellant's hip injury and the resulting medically necessary surgery were directly related to the hip work injury.

On October 19, 2023 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

By decision dated January 8, 2024, a hearing representative affirmed OWCP's September 28, 2023 decision, finding that no physician provided an affirmative medical opinion with rationale that appellant's diagnosed right hip condition was caused or aggravated by his regular job duties over a period of time to support an occupational disease as claimed. The hearing representative noted that there was insufficient evidence to warrant converting the instant claim to a traumatic injury, as appellant never factually claimed a specific work event occurring on June 28, 2023.

OWCP subsequently received a November 22, 2023 progress report from Dr. Alost and copies of appellant's November 22, 2023 diagnostic tests. Dr. Alost related that appellant had been released to full-duty work, and would return to his office as needed.

On March 27, 2024 appellant, through counsel, requested reconsideration.

In a February 28, 2024 report, Dr. Alost opined that appellant post traumatically aggravated his preexisting avascular necrosis of his right hip which he reported was injured on June 28, 2023. He indicated that appellant's June 19, 2023 MRI scan of the right hip demonstrated

avascular necrosis of the right hip femoral head with collapse of the femoral head. Appellant related his increased hip pain to the repetitive lifting of heavy objects at work with the associated twisting and turning as part of his job duties. Dr. Alost explained that the physical forces of appellant's job caused the stable preexisting avascular necrosis condition of the right hip to worsen due to the collapse of the femoral head.

By decision dated April 17, 2024, OWCP denied modification of its January 8, 2024 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim, including 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 period of FECA,<sup>5</sup> that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup> 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.<sup>7</sup>

In an occupational disease claim, appellant's burden of proof requires submission of the following: (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 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.<sup>8</sup>

Causal relationship is a medical issue that requires rationalized medical opinion evidence to resolve the issue.<sup>9</sup> 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.<sup>10</sup>

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *U.M.*, Docket No. 23-0625 (issued August 11, 2023); *S.M.*, Docket No. 21-0937 (issued December 21, 2021); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *U.M.*, *id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *U.M.*, *id.*; *M.T.*, Docket No. 20-1814 (issued June 24, 2022); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *U.M.*, *id.*; *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>9</sup> *J.L.*, Docket No. 21-1373 (issued March 27, 2023); *K.R.*, Docket No. 21-0822 (issued June 28, 2022); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

<sup>10</sup> *G.S.*, Docket No. 22-0036 (issued June 29, 2022); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right hip condition causally related to the accepted factors of his federal employment.

Appellant submitted several reports from Dr. Alost which diagnosed avascular necrosis of the head of right femur. Dr. Alost also indicated that on September 22, 2023 he performed a medically necessary core decompression with injection of allograft putty in the right hip due to the diagnosed avascular necrosis of the head of right femur. In his August 23, 2023 report, he reported that on June 29, 2023 appellant was lifting heaving boxes and containers, and the next day he had pain in his hip and groin. Dr. Alost diagnosed avascular necrosis of the head of right femur, and recommended a core decompression of right hip. However, he failed to provide his own medical opinion regarding the cause of appellant's diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value.<sup>12</sup> Thus this report is insufficient to establish appellant's claim.

In his October 18, 2023 report, Dr. Alost reported a different history of injury. He noted on June 28, 2023 that appellant was lifting boxes weighing approximately 70 pounds at work, and immediately felt a sharp pain in his hip and reported the injury. Dr. Alost stated that appellant felt a pop in his right hip when lifting and his hip pain progressed from then on. He explained that the pop in the hip was a microfracture of the femoral head which then led to bone death and failure to heal. While Dr. Alost opined that the right hip injury and resulting medically necessary surgery were directly related to the repetitive heavy lifting of boxes at work, his opinion is not based on an accurate history of injury, as there is no factual evidence in the record substantiating that appellant had reported a pop in his right hip while lifting on June 28, 2023. Medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.<sup>13</sup> For this reason, Dr. Alost's October 18, 2023 report is insufficient to establish appellant's claim.<sup>14</sup>

In his February 28, 2024 report, Dr. Alost corrected his earlier opinion of October 18, 2023 by opining that appellant had post traumatically aggravated his preexisting avascular necrosis of his right hip which he reported was injured on June 28, 2023. He indicated that appellant's June 19, 2023 MRI scan of the right hip showed avascular necrosis of the right hip femoral head

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<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *D.W.*, Docket No. 20-0674 (issued September 29, 2020); *V.W.*, Docket No. 19-1537 (issued May 13, 2020); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>12</sup> *G.L.*, Docket No. 24-0366 (issued May 17, 2024); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>13</sup> See *infra* note 15.

<sup>14</sup> As noted, OWCP's hearing representative found that there was insufficient evidence in the record to support a traumatic injury claim in this case.

with collapse of the femoral head. Dr. Alost further indicated that appellant related his increased hip pain to the repetitive lifting of heavy objects at work with the associated twisting and turning, and explained that the physical forces of appellant's job caused the stable preexisting avascular necrosis condition of the right hip to worsen due to the collapse of the femoral head. The Board finds that Dr. Alost's opinion is insufficiently rationalized and conclusory. Medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.<sup>15</sup> Medical rationale explaining causal relationship is especially necessary in any case where a preexisting condition involving the same part of the body is present, and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation. The Board, therefore, finds that Dr. Alost's report is insufficient to establish appellant's claim.

In an August 9, 2023 report, Dr. Ledford reported that appellant lifted heavy boxes and containers of mail, and that he awoke one morning and felt pain at the top side of his hip. She diagnosed avascular necrosis of the head of right femur, and pain in right hip joint, and provided work restrictions. However, she failed to provide an opinion regarding the cause of appellant's diagnosed conditions. As noted, medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value.<sup>16</sup> Thus this report is insufficient to establish appellant's claim.

Appellant also submitted reports from a certified family nurse practitioner. The Board has held, however, that certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA and their reports do not constitute competent medical evidence.<sup>17</sup> This report is thus of no probative value and is insufficient to establish the claim.

Appellant submitted diagnostic reports dated June 19 and November 22, 2023. However, the Board has also held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment factors caused the diagnosed condition(s).<sup>18</sup> Therefore, these reports are insufficient to establish appellant's claim.

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<sup>15</sup> *J.H.*, Docket No. 24-0415 (issued May 23, 2024); *C.C.*, Docket No. 15-1056 (issued April 4, 2016); *see T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *William C. Thomas*, 45 ECAB 591 (1994) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>16</sup> *See supra* note 12.

<sup>17</sup> *C.S.*, Docket No. 23-0865 (issued May 14, 2024) (the reports of nurse practitioners do not constitute competent medical evidence). Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *E.H.*, Docket No. 23-0373 (issued July 7, 2023) (nurse practitioners are not considered physicians as defined under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

<sup>18</sup> *A.O.*, Docket No. 21-0968 (issued March 18, 2022); *see M.S.*, Docket No. 19-0587 (issued July 22, 2019).

As the medical evidence of record is insufficient to establish causal relationship between appellant's right hip condition and the accepted employment factors, 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.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a right hip condition causally related to the accepted factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 17, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2024  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board