

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

E.B., Appellant)	
)	
and)	Docket No. 24-0329
)	Issued: June 7, 2024
U.S. POSTAL SERVICE, CARRIER SQUARE)	
POST OFFICE, St. Louis, MO, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 9, 2024 appellant, through counsel, filed a timely appeal from a January 20, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this 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 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On December 4, 2022 appellant, then a 57-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she developed bursitis and a tear in her right hip due to factors of her federal employment, including lifting trays of mail overhead and pushing equipment repetitively. She noted that she first became aware of her conditions on May 20, 2022 and realized their relation to her federal employment on November 30, 2022.

In an accompanying statement, appellant further described the circumstances surrounding her occupational disease claim. She related that she began working for the employing establishment in July 2021 and would sometimes be assigned to work by herself at a machine, which entailed lifting trays overhead and pushing equipment in the building. Appellant reported that over time she began experiencing pain in her right hip, which continued to worsen. She explained that in May 2022 she sought medical treatment with her physician and an x-ray of her right hip revealed a small tear in the muscle. Appellant described her treatment and work restrictions. She described that on November 30, 2022 she had worsening pain and stated that her right hip pain became excruciating causing her to seek emergency medical treatment where a larger tear and interior bleeding was discovered on diagnostic testing, causing the physician to place her off work.

In a December 12, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

Appellant submitted additional evidence in support of her claim. A May 20, 2022 right hip magnetic resonance imaging (MRI) scan showed an impression of moderate partial-thickness tear and tendinopathy of the distal gluteus medius and minimus tendon insertions with moderate overlying trochanteric bursitis. A January 3, 2023 right hip MRI scan showed an impression of progression of distal right gluteus medius and minimus abnormalities since May 20, 2022, now with focal full-thickness gluteus medius and high-grade partial-thickness *versus* full-thickness tears of the gluteus minimus tendon insertions, and increased trochanteric bursitis.

In a November 30, 2022 note, Dr. Timothy L. Kella, Board-certified in internal medicine, reported that appellant was treated in the emergency department on that date and could return to work on December 7, 2022.

By decision dated January 25, 2023, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted factors of her federal employment.

On January 31, 2023 appellant requested reconsideration and submitted additional evidence.

In a January 31, 2023 medical note, Dr. Vince J. Lai, a Board-certified orthopedic surgeon, reported appellant's right hip injury on January 30, 2023. He opined that appellant's preexisting right hip issue was being aggravated by her employment duties, which involved moving trays to and from a truck.

On a February 6, 2023 operative report Dr. Husam Nawas, a Board-certified orthopedic surgeon, performed an open gluteus medius repair and open trochanteric bursectomy. He diagnosed right hip gluteus medius tear and right hip trochanteric bursitis.

By decision dated March 17, 2023, OWCP denied modification of its January 25, 2023 decision.

On December 7, 2023 appellant, through counsel, requested reconsideration.

In a report dated September 28, 2023, Dr. Neil Allen, a Board-certified internist, described appellant's employment duties as an automation clerk, which entailed loading mail onto a belt and feeding mail into a machine, walking approximately 20 feet to the other end of the machine to retrieve the mail, loading mail onto trays weighing approximately 35 to 50 pounds, and placing full trays on a rack in a cage. He explained that a full cage held approximately 70 trays of mail weighing 2,500 to 3,500 pounds, which appellant was required to push approximately 200 yards up to 3 times per day during her workday. Dr. Allen noted that this required standing and walking on concrete floors throughout the entirety of her eight-hour shift, six days per week.

Dr. Allen explained that on November 29, 2022, while on duty, appellant bent down and felt a "pop" in her right³ hip and found herself unable to fully extend upright or walk. The following morning, she was unable to rise from bed due to pain and weakness in her right hip causing her to seek care with Dr. Lai, and eventually undergo surgery on February 6, 2023 for an open gluteus medius repair and open trochanteric bursectomy. Dr. Allen discussed appellant's complaints of right hip pain. He noted a prior condition involving the hip in September 2020 where appellant was reportedly diagnosed with bursitis, treated with physical therapy and cortisone injections for a year and a half period while appellant continued with her regular duties. Dr. Allen explained that as her condition worsened resulting in her difficulty walking, she was provided work restrictions.

Dr. Allen reported that a May 20, 2022 right hip MRI scan revealed an impression of moderate partial thickness tear and tendinopathy of the distal gluteus medius and minimus tendon insertions with moderate overlying trochanteric bursitis. He noted a January 3, 2023 right hip MRI scan revealed progression of distal right gluteus medius and minimus abnormalities since May 20, 2022, now with focal full-thickness gluteus medius and high-grade partial-thickness *versus* full-thickness tears of the gluteus minimus tendon insertions. Dr. Allen diagnosed tear of the gluteus medius and aggravation of trochanteric bursitis, which he opined were directly related and/or aggravated by her employment duties as an automation clerk.

³ Although Dr. Allen initially referenced appellant's left hip, he correctly mentioned the right hip in the remainder of his report.

Dr. Allen described the mechanism of injury, stating that “[t]he gluteus medius muscle prevents the hip from dropping in stance phase, thereby stabilizing the joint” and “also generates strong contractions to stabilize the hip while pushing and pulling large loads.” He explained that appellant “was required to repetitively push and pull large loads and walk and stand on concrete floors daily,” which overworked, weakened, and irritated her gluteal muscle tendons as demonstrated on her May 20, 2022 MRI scan. Dr. Allen reported that when appellant bent forward while on duty on November 29, 2022, she stretched and tore the comprised tendons of the gluteus medius muscle as evidenced by the progression illustrated on her January 3, 2023 MRI scan. He further asserted that her repetitive duties also aggravated her previously diagnosed trochanteric bursitis, explaining that her gluteus medius and gluteus minimus musculature was weakened and subsequently injured due to constant standing, walking and repetitive pushing and pulling required by her position. Dr. Allen explained that the lateral structures of her right hip, specifically the tensor fasciae latae (TFL), took over the task of stabilizing her right hip, and the tightening of these lateral structures further compressed and created friction across her right trochanteric bursa creating inflammation. He opined that over time this chronic inflammation, in the absence of adequate rest and healing, resulted in an aggravation of appellant’s previously diagnosed trochanteric bursitis.

By decision dated January 20, 2024, OWCP denied modification of its March 17, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 timely filed within the applicable time limitation of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ 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.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit 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

⁴ *Supra* note 1.

⁵ *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹⁰ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹¹

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.¹²

ANALYSIS

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

In support of her claim, appellant submitted a September 28, 2023 report from Dr. Allen wherein he diagnosed tear of the gluteus medius and aggravation of trochanteric bursitis, which he opined were directly related and aggravated by her employment duties as an automation clerk. In reviewing the history of injury, Dr. Allen noted that while appellant was working on November 29, 2022, she bent down and felt a "pop" in her right hip and was unable to fully extend upright or walk. He pointed out that, "[t]he gluteus medius muscle prevents the hip from dropping in stance phase, thereby stabilizing the joint" and "also generates strong contractions to stabilize the hip while pushing and pulling large loads." Dr. Allen explained that appellant "was required to repetitively push and pull large loads and walk and stand on concrete floors daily," which overworked, weakened, and irritated her gluteal muscle tendons as demonstrated on her May 20, 2022 MRI scan. He further explained that when appellant bent forward at work on November 29, 2022, she stretched and tore the comprised tendons of the gluteus medius muscle as evidenced by the progression illustrated on her January 3, 2023 MRI scan. Dr. Allen reported that appellant's repetitive duties also aggravated her previously diagnosed trochanteric bursitis, explaining that her gluteus medius and gluteus minimus musculature was weakened and subsequently injured due to

⁸ *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *see also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹¹ *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

constant standing, walking, and repetitive pushing and pulling required by her position. He further reported that the lateral structures of appellant's right hip, specifically the TFL, took over the task of stabilizing her right hip, and the tightening of these lateral structures further compressed and created friction across her right trochanteric bursa creating inflammation. Dr. Allen concluded that over time this chronic inflammation, in the absence of adequate rest and healing, resulted in an aggravation of appellant's previously diagnosed trochanteric bursitis.

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹³ While appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁴ OWCP has an obligation to see that justice is done.¹⁵

The Board finds that Dr. Allen's opinion, while not fully rationalized, is sufficient to require further development of the case record by OWCP.¹⁶

The Board will, therefore, remand the case for further development of the medical evidence. On remand, OWCP shall prepare a statement of accepted facts and obtain a rationalized opinion from a physician in the appropriate field of medicine as to whether the accepted employment factors caused, contributed to, or aggravated the claimed conditions. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why their opinion differs from that of Dr. Allen. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹³ *J.B.*, Docket No. 24-0089 (issued April 4, 2024); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁴ *See J.B.*, *id.*; *M.M.*, Docket No. 22-0637 (issued November 30, 2022); *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999); *John J. Carlone*, *id.*

¹⁵ *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, *id.*

¹⁶ *M.S.*, Docket No. 20-1095 (issued March 29, 2022); *B.F.*, Docket No. 20-0990 (issued January 13, 2021); *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *E.J.*, *id.*; *John J. Carlone*, *id.*; *see also Horace J. Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2024 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 7, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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