

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

P.T., Appellant

and

**U.S. POSTAL SERVICE, BUSTLETON
STATION, Philadelphia, PA, Employer**

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**Docket No. 24-0039
Issued: September 30, 2024**

Appearances:
*Russell Uliase, Esq., for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 20, 2023 appellant, through counsel, filed a timely appeal from a May 3, 2023 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 his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On August 3, 2022 appellant, then a 53-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed right hip osteoarthritis due to factors of his federal employment, including standing and walking 8 to 10 hours a day, five to six days a week on uneven surfaces and ascending and descending stairs throughout his 28-year career with the employing establishment. He noted that he first became aware of his condition on May 11, 2022 and realized its relationship to his federal employment on June 23, 2022.³

On June 20, 2022 Dr. Pei Sheun A. Lee, a Board-certified internist, found appellant totally disabled from work. In June 23, 2022 report, he diagnosed bilateral hip osteoarthritis and opined that this condition was the direct result of appellant's duties as a letter carrier, including casing and sorting mail; constant bending, stooping, twisting, turning; prolonged walking on uneven surfaces; and ascending and descending stairs while carrying a heavy weight.

In an August 5, 2022 development letter, OWCP informed appellant of the deficiencies of his occupational disease claim. It advised him of the type of additional factual and medical evidence needed and afforded him 30 days to provide the necessary evidence.

In an August 23, 2022 report, Dr. Lee diagnosed bilateral hip osteoarthritis and related appellant's history of left hip replacement surgery. He recounted appellant's history of increasing right-sided hip pain and opined that his job duties worsened his diagnoses of hip osteoarthritis. Dr. Lee explained that osteoarthritis was a degenerative condition where the cartilage of a joint wears out with repetitive motion, and that continued repetitive motion would worsen this degeneration and would cause bone on bone contact in a joint space leading to pain and discomfort.

By decision dated September 9, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between a medical condition and the accepted employment factors.

On February 3, 2023 appellant requested reconsideration and submitted additional medical evidence.

In a January 19, 2023 report, Dr. Lee opined that osteoarthritis was a degenerative condition that was exacerbated by movement and activity when the movement caused wear on

³ OWCP assigned the claim OWCP File No. xxxxxx228. Appellant has a previously-accepted occupational disease claim under OWCP File No. xxxxxx922 for unilateral primary osteoarthritis of the left hip. Appellant's claims have not been administratively combined.

the bones and cartilage of the joint space. He related that appellant's hips had become more arthritic due to years of ambulation and carrying while working as a mail carrier.

By decision dated May 3, 2023, OWCP denied modification of its September 9, 2022 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 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

⁴ *Supra* note 2.

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).

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).

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 the case is not in posture for decision.

In a June 23, 2022 report, Dr. Lee diagnosed bilateral hip osteoarthritis and opined that this condition was the direct result of appellant's duties as a letter carrier, including casing and sorting mail; constant bending, stooping, twisting, turning; prolonged walking on uneven surfaces; and ascending and descending stairs while carrying a heavy weight. In an August 23, 2022 report, Dr. Lee provided a diagnosis of hip osteoarthritis, described appellant's job duties and opined that these activities caused his hip to become more arthritic. He further explained that osteoarthritis was a degenerative condition where the cartilage of a joint wears out with repetitive motion, and that continued repetitive motion would worsen this degeneration and would cause bone on bone contact in a joint space leading to pain and discomfort. In a January 19, 2023 report, Dr. Lee further explained that osteoarthritis was exacerbated by movement and activity when the movement caused wear on the bones and cartilage of the joint space. He related that appellant's hips had become more arthritic due to years of ambulation and carrying while working as a mail carrier. The Board finds that Dr. Lee's opinion, while not fully rationalized, is sufficient to require further development of the case record by OWCP.¹³

It is well established that proceedings under FECA are not adversarial in nature and, 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

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).

¹³ *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*, 41 ECAB 354 (1989).

¹⁴ See *A.D.*, Docket No. 21-0143 (issued November 15, 2021); see also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁵ *Id.*; *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone, supra* note 13.

The case shall, therefore, be remanded for further development of the medical evidence. On remand, OWCP shall, for full and fair adjudication, administratively combine OWCP File Nos. xxxxxx228 and xxxxxx922.¹⁶ It shall then refer appellant, along with the medical record and a statement of accepted facts, to a specialist in the appropriate field of medicine, for a rationalized opinion regarding whether appellant sustained a medical condition causally related to the accepted employment factors. 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. Lee. 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.

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2023 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: September 30, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).