United States Department of Labor
Employees' Compensation Appeals Board

G.C., Appellant	)	
and	)	**Docket No. 24-0718**
	)	**Issued: September 19, 2024**
DEPARTMENT OF THE NAVY, NORFOLK NAVAL SHIPYARD, Portsmouth, VA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On June 26, 2024 appellant, through counsel, filed a timely appeal from a June 10, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[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*.

[3] The Board notes that, following the June 10, 2024 decision, appellant submitted additional evidence to OWCP. 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 expand the acceptance of his claim to include aggravation of avascular necrosis of the hips, causally related to, or as a consequence of the accepted October 23, 2019 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.[4] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 13, 2021 appellant, then a 35-year-old painter, filed a traumatic injury claim (Form CA-1) alleging that on October 23, 2019 he sustained an injury to his hip and groin area while in the performance of duty. He did not stop work.

On October 29, 2020 appellant underwent a magnetic resonance imaging (MRI) arthrogram of the left hip that demonstrated no labral tear, ligamentous injuries or bursitis, and extensive bilateral femoral head avascular necrosis.

An MRI scan of the right hip dated November 6, 2020 demonstrated no right labral tear, chondral defect or ligamentous injury, extensive bilateral femoral head avascular necrosis.

By decision dated February 24, 2021, OWCP accepted appellant's traumatic injury claim for a strain of muscle, fascia and tendon of the right hip.

Dr. Gregory Golladay, a Board-certified orthopedic surgeon, treated appellant from April 16 through December 10, 2021, for worsening bilateral hip pain. He noted that appellant's symptoms commenced after a lifting injury in 2019 at work and progressed to mixed sclerosis and lucency in both femoral heads, peripheral osteophytes at the femoral head neck junctions, and subtle collapse in the superior lateral femoral head bilaterally. Dr. Golladay diagnosed avascular necrosis and osteonecrosis of the hips. He recommended bilateral hip replacements. In a report dated December 10, 2021, Dr. Golladay noted a history of appellant's accepted October 23, 2019 employment injury and diagnosed avascular necrosis of the bilateral hips, which had progressed requiring a staged bilateral hip replacement. He opined that the accepted October 23, 2019 employment injury caused his hip conditions necessitating treatment. Dr. Golladay noted that appellant had no other identified risk factors for osteonecrosis.

X-rays of the hips dated August 13, 2021 revealed no acute osseous abnormalities and osteonecrosis of the femoral heads without subchondral collapse. An x-ray of the hips dated November 19, 2021 revealed osteonecrosis of the femoral heads with findings suspicious for early subchondral collapse.

On January 6, 2022 OWCP referred appellant, the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. Lawrence Shall, a Board-certified orthopedic surgeon, for a second opinion examination and a report on appellant's employment-related conditions and disability.

[4] Docket No. 21-0679 (issued January 13, 2022).

In a February 1, 2022 medical report, Dr. Shall described appellant's October 23, 2019 employment injury, noting that he was lifting a five-gallon paint container and injured his right hip. He noted findings on physical examination of nonradicular pain associated with clicking and popping, bilateral positive hip roll test, painful motor examination about the hips, bilateral antalgic, and a severe limp. Dr. Shall diagnosed very mild hip strain, most likely an exacerbation of the symptoms of preexisting avascular necrosis. He noted that the mild hip strain had resolved; however, appellant had persistently symptomatic avascular necrosis of both hips. Dr. Shall advised that appellant's symptoms were completely attributable to avascular necrosis, which takes a long time to develop and was not a trauma-related condition. He noted that there was no further treatment for the hip strain. Dr. Shall indicated that for residual symptomology of avascular necrosis the treatment is a total hip arthroplasty. He advised that the underlying baseline of avascular necrosis was not on the accepted October 23, 2019 employment injury but preexisted the minor injury at work. In a work capacity evaluation (Form OWCP-5c) of even date, Dr. Shall indicated that maximum medical improvement (MMI) was reached with regard to the right hip sprain, but appellant remained totally disabled from work.

On March 28, 2022 appellant, through counsel, requested expansion of the acceptance of his claim to include avascular necrosis of the hips. In support of his request, he submitted a January 19, 2022 computerized tomography (CT) scan of the abdomen and pelvic region, which revealed no evidence of acute abdominal abnormality and sclerotic areas in femoral heads suggesting avascular necrosis. Appellant also submitted the October 29, 2020 MRI arthrogram of the left hip, November 6, 2020 MRI scan of the right hip, and Dr. Golladay's December 10, 2021 report, previously of record.

In a letter dated May 13, 2022, OWCP advised appellant that a conflict in medical opinion existed between Dr. Shall, OWCP's second opinion examiner, and Dr. Golladay, appellant's treating physician, regarding whether the aggravation of avascular necrosis of the hips was causally related to the accepted October 23, 2019 employment injury. It referred him, along with the case record, a SOAF dated May 13, 2022, and a series of questions, to Dr. Donald Getz, a Board-certified orthopedic surgeon, for an impartial medical examination. The SOAF noted that appellant's claim was accepted for strain of muscle, fascia and tendon of the right hip.

In a July 26, 2022 report, Dr. Getz, serving as the impartial medical examiner (IME), described a history of the October 23, 2019 employment injury, noted his review of the medical reports, and recounted appellant's continued complaints. Upon physical examination of appellant's right hip there was tenderness over the trochanteric bursa, mild groin pain with flexion, abduction, and internal rotation, and a well-healed scar on his posterior hip. With regard to the left hip, he noted decreased range of motion, a marked limp, and groin pain with flexion, abduction, and internal rotation. Dr. Getz diagnosed bilateral avascular necrosis of the hips, not work related, and status post right total hip arthroplasty. He opined that the original diagnosis of bilateral hip strain was incorrect. Dr. Getz noted that the accepted condition of right hip strain had resolved; however, the correct diagnosis was avascular necrosis of the right femoral head with aggravation due to conditions of employment. He noted that carrying a heavy weight was an unlikely cause of bilateral hip strain or bilateral hip osteonecrosis, rather, the symptoms develop gradually over time. Dr. Getz related that the aggravation was permanent, and the work-related aggravation resulted in a right total hip arthroplasty. He opined that the accepted work-related condition and aggravation of hip strain resolved.

On October 4, 2022 appellant, through counsel, requested expansion of the acceptance of his claim to include avascular necrosis of the right femoral head with aggravation and left hip condition.

By decision dated November 22, 2022, OWCP expanded the acceptance of appellant's claim to include avascular necrosis of the right femoral head with aggravation, and left hip.

On January 12, 2023 OWCP requested clarification from Dr. Getz. It requested that he address whether the employment injury contributed to appellant's left hip condition.

In a supplemental report dated February 5, 2023, Dr. Getz noted that the employment injury did not contribute to the left hip condition. He indicated that there was no mention of a left hip injury until July 2020, nearly 10 months after the work injury. Dr. Getz noted that avascular necrosis of the hip was caused by blocking off the blood vessels or the ripping of blood vessels associated with a major head trauma (dislocation or fracture). He explained that for the blood supply to be interrupted traumatically a significant injury such as a fracture or dislocation would have had to occur, and this injury would be so severe that it could not go unnoticed for 10 months.

By decision dated March 29, 2023, OWCP denied appellant's request to expand the acceptance of his claim to include aggravation of avascular necrosis of the hips finding the special weight of medical evidence rested with the opinion of Dr. Getz, the IME, who opined in reports dated July 26, 2022 and February 5, 2023 that the avascular necrosis of the hips were not causally related to the accepted October 23, 2019 employment injury.

OWCP received additional evidence. On February 21, 2022 Dr. Golladay performed a total right hip arthroplasty and diagnosed other osteonecrosis, unspecified femur.

On April 7, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on September 14, 2023.

By decision dated December 13, 2023, OWCP's hearing representative affirmed the March 29, 2023 decision.

OWCP received additional evidence. An x-ray of the hips dated February 2, 2024 revealed left and right total hip arthroplasties, with no interval signs of complication.

In support of his claim, appellant submitted an April 23, 2024 report, wherein Dr. Golladay noted bilateral hip replacements were performed to treat avascular necrosis of the hips. He related that the right hip was replaced on February 21, 2022, and the left hip was replaced on December 21, 2022. Dr. Golladay opined that the accepted October 23, 2019 employment injury was caused by carrying a five gallon can of paint. He further noted that on July 9, 2020, while walking to work from the parking lot, appellant experienced a significant exacerbation of pain. Dr. Golladay explained that appellant had no other identified risk factors for osteonecrosis and the trauma he experienced on the job was causative of his hip condition. This report was unsigned.

On May 2, 2024 appellant, through counsel, requested reconsideration.

By decision dated May 9, 2024, OWCP denied modification of the December 13, 2023 decision.

OWCP received additional evidence, including a signed copy of Dr. Golladay's April 23, 2024 report.

On June 4, 2024 appellant, through counsel, requested reconsideration. Appellant submitted hospital records from the February 21,2022 total right hip arthroplasty, and an x-ray of the hip dated February 2, 2024, both previously of record.

By decision dated June 10, 2024, OWCP denied modification of the May 9, 2024 decision.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[5]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[6] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment injury must be based on a complete factual and medical background.[7] 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).[8]

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to a claimant's own intentional misconduct.[9] Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural consequence of a compensable primary injury.[10]

FECA provides that if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.[11] For a conflict to arise the opposing physicians' viewpoints must be of virtually equal weight and rationale.[12] Where OWCP has referred the case to an IME to resolve a conflict in the medical

[5] *See T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

[6] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[7] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] *Id*.

[9] *See S.M.*, Docket No. 19-0397 (issued August 7, 2019); *Mary Poller*, 55 ECAB 483, 487 (2004); 1 Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation*, § 10-1 (2006).

[10] *A.T.*, Docket No. 18-1717 (issued May 10, 2019); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

[11] 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

[12] *H.B.*, Docket No. 19-0926 (issued September 10, 2020); *D.P.*, Docket No. 23-0374 (issued August 19, 2024); *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006); *James P. Roberts*, 31 ECAB 1010 (1980).

evidence, the opinion of such a specialist, if sufficiently well-reasoned and based upon a proper factual background, must be given special weight.[13]

ANALYSIS

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

Dr. Getz' opinion contradicts the SOAF, and the referral letter, which listed appellant's conditions accepted under this claim, and instructed him to consider the accepted conditions in his evaluation. In his July 26, 2022 report, Dr. Getz diagnosed bilateral avascular necrosis of the hips, not work related, and status post right total hip arthroplasty. He opined that the original diagnosis of bilateral hip strain was incorrect. Dr. Getz noted that the accepted condition of right hip strain resolved; however, the correct diagnosis was avascular necrosis of the right femoral head with aggravation due to conditions of employment. He noted that carrying a heavy weight was unlikely to cause bilateral hip strain or bilateral hip osteonecrosis, rather, the symptoms develop gradually over time. Dr. Getz noted that the aggravation was permanent, and the work-related aggravation resulted in a right total hip arthroplasty. However, he did not use the framework of the SOAF, which stated that appellant's claim was accepted for strain of muscle, fascia, and tendon of the right hip, rather, he stated that this diagnosis was "incorrect."

OWCP's procedures provide that when an OWCP district medical adviser (DMA), second opinion specialist, or referee physician renders a medical opinion based on a SOAF, which is incomplete or inaccurate, or does not use the SOAF as the framework in forming their opinion, the probative value of the opinion is seriously diminished or negated altogether.[14] As Dr. Getz did not use the SOAF as the framework for his opinion, it is of diminished probative value.[15]

When OWCP obtains an opinion from an IME for the purpose of resolving a conflict in medical evidence and the specialist's opinion requires clarification or elaboration, OWCP must secure a supplemental report from the specialist to correct the defect in the original report.[16] However, when the IME is unable to clarify or elaborate on the original report or if a supplemental report is also vague, speculative or lacking in rationale, OWCP must submit the case record and a detailed SOAF to a second IME for the purpose of obtaining a rationalized medical opinion on the issue.[17] In this case, the Board finds that Dr. Getz, serving as the IME, fails to use the SOAF as the framework in forming his opinion, and, is therefore insufficient to carry the special weight of the medical evidence regarding the expansion of appellant's claim.[18] On remand, OWCP shall

[13] 20 C.F.R. § 10.321. *See also J.H.*, Docket No. 22-0981 (issued October 30, 2023); *James P. Roberts, id.*; *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[14] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

[15] *Id. See also A.D.*, Docket No. 20-0553 (issued April 19, 2021); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *M.D.*, Docket No. 18-0468 (issued September 4, 2018); *Paul King*, 54 ECAB 356 (2003).

[16] *Raymond A. Fondots*, 53 ECAB 637, 641 (2002); *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988); *Ramon K. Ferrin, Jr.*, 39 ECAB 736 (1988).

[17] *Nancy Keenan*, 56 ECAB 687 (2005); *Roger W. Griffith*, 51 ECAB 491 (2000); *Talmadge Miller*, 47 ECAB 673 (1996).

[18] *See L.Y.*, Docket No. 20-0398 (issued February 9, 2021); *Paul R. Evans, Jr.*, 44 ECAB 646, 651 (1993).

refer appellant to a new IME in the appropriate field of medicine. After this and other such further development as deemed necessary, it 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 June 10, 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: September 19, 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