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

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| **M.V., Appellant** | ) | |
| **and** | ) | **Docket No. 11-594** |
| | ) | **Issued: October 19, 2011** |
| **U.S. POSTAL SERVICE, POST OFFICE, Honolulu, HI, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### *JURISDICTION*

On January 3, 2011 appellant filed a timely appeal from the July 15 and September 27, 2010 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### *ISSUE*

The issue is whether appellant sustained left ankle and back conditions in the performance of duty.

### *FACTUAL HISTORY*

Appellant, a 54-year-old letter carrier, filed an occupational disease claim on May 14, 2010, alleging a left ankle and back condition causally related to employment factors.

[1] 5 U.S.C. § 8101 *et seq.*

On May 28, 2010 OWCP advised appellant that it required factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive report from a treating physician describing his symptoms, the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to his federal employment. OWCP requested that appellant submit this evidence within 30 days.

In a November 19, 2009 surgical report, Dr. Gregory Morris, a podiatrist, noted that appellant had experienced chronic left ankle pain, instability and weakness for several years. He performed a left ankle arthroscopy with debridement procedure to repair a medial osteochondral defect in the talar dome.

In an April 12, 2010 report, Dr. Jayson H. Takata, Board-certified in physical medicine and rehabilitation, stated that appellant underwent right ankle surgery in November 2009 to ameliorate chronic ankle instability with osteochondral defect of the medial talar dome. Appellant experienced right hip and flank region pain before the operation. Dr. Takata advised that appellant's symptoms worsened after surgery and could be related to weight shifting. Appellant had also complained of chronic interscapular pain, which had existed for several years. Dr. Takata stated that appellant had undergone x-ray testing recently and found muscle spasms. Appellant rated his pain as an 8 on a 10-point scale exacerbated by prolonged walking or standing.

Dr. Takata concluded that appellant had chronic thoracic back pain which appeared to be myofascial, in addition to scoliosis. He also had right-sided low back pain, musculoskeletal in nature, with an element of upper lumbar radiculopathy. Dr. Takata recommended that appellant undergo a magnetic resonance imaging (MRI) scan of the lumbar spine, in addition to x-rays to evaluate for scoliosis and degenerative changes.

Appellant underwent an MRI scan of the lumbar spine and x-ray testing of the thoracic spine on May 3, 2010. Dr. Takata reviewed the results and found a minimal disc bulge at L5-S1; mild facet degenerative joint disease at L4-5; mild degenerative disc disease at L5-S1; and mild dextroconvex upper thoracic scoliosis T1 through T6.

In a June 14, 2010 report, Dr. Takata stated that appellant had experienced right-sided thoracic, interscapular and flank pain since 1980, which improved with physical therapy. He advised that appellant's pain had worsened to the extent that it had affected his ability to perform his job, which required him to carry a satchel full of mail. Dr. Takata stated that appellant's work duties had progressively exacerbated his back symptoms.

In a June 19, 2010 report, Dr. Glenn S. Yonemura, Board-certified in internal medicine, advised that appellant had been experiencing increasing pain since May 2009 in the left ankle and right lower back areas and apparently exacerbated by his work as a mailman. He advised that appellant was referred to a podiatrist and then to a physiatrist for surgery and rehabilitation. Dr. Yonemura opined that, although appellant continued to have moderate difficulties which were being treated, his condition had resolved sufficiently to resume work with restrictions.

By decision dated July 15, 2010, OWCP denied the claim, finding that appellant failed to submit sufficient medical evidence to establish that his claimed left ankle or back conditions were related to factors of employment.

On July 21, 2010 appellant requested reconsideration.

Appellant submitted reports dated November 2009 through May 2010 from Dr. Morris, his treating podiatrist, who stated that appellant had been experiencing chronic pain and instability in his left ankle. He initially injured his left ankle 20 years prior while working as a deliveryman for the employing establishment. Dr. Morris obtained a history that appellant had sustained multiple ankle sprains since that time with a more severe sprain in November 2007, which resulted in increased pain and weakness to the onset of his left ankle. Appellant had been decreasing his activities and exercising due to the pain. Dr. Morris stated that an MRI scan revealed preexisting damage to the lateral ankle ligaments, in addition to atrophy, and a chip fracture or osteochondral defect of the medial talar dome. In light of these findings, he scheduled appellant for left ankle surgery on November 19, 2010.

In a March 24, 2010 report, Dr. Morris advised that appellant's left ankle was 90 to 95 percent improved, with no swelling in his foot; however, his back continued to cause pain and limited his activity and work. He advised that appellant's ankle surgery went well and he had healed with good results. Dr. Morris cleared appellant to return to all normal activities as tolerated. Appellant underwent physical therapy and submitted several reports from a physical therapist.

In a report dated May 5, 2010, received by OWCP on August 6, 2010, Dr. Morris stated that appellant's left ankle had improved after he underwent physical therapy. He stated, however, that appellant still had instability with continued pain and swelling with prolonged walking or standing. Dr. Morris stated that x-rays of the left ankle showed good alignment of the ankle joint, with mild lucency along the medial ankle talar dome.

By decision dated September 27, 2010, OWCP denied modification of the July 15, 2010 decision.[2]

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[3] has the burden of establishing that 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 of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition 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]

[2] The Board notes that OWCP made findings and cited case law which pertained to a traumatic injury case, despite the fact that appellant filed a Form CA-2 claim for occupational disease. In its September 27, 2010 decision, however, OWCP found that appellant did not submit sufficient medical evidence to establish that he sustained left ankle and lower back conditions in the performance of duty.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 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 identified by the claimant.[6]

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed right shoulder condition and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[7]

## ***ANALYSIS***

The Board finds that appellant failed to submit sufficient medical evidence to establish that his claimed left ankle or back conditions were related to factors of his employment as a letter carrier. For this reason, appellant did not discharge his burden of proof.

Dr. Morris stated in a November 11, 2009 report that appellant had experienced chronic pain and instability in his left ankle, which he originally injured some 20 years prior while working as a deliveryman. This instability resulted in several ankle sprains including a severe sprain in November 2007, which caused increased pain and weakness. Dr. Morris advised that an MRI scan indicated preexisting damage to the lateral ankle ligaments, in addition to atrophy, and a chip fracture or osteochondral defect of the medial talar dome. He performed arthroscopic surgery to ameliorate these conditions on November 19, 2009. Dr. Morris submitted several reports noting appellant's progress and indicated on August 5, 2010 that the ankle surgery was successful and that appellant was 90 to 95 percent improved with no swelling in his left foot. He cleared appellant to return to all normal activities as tolerated.

Dr. Morris' opinion is of limited probative value as the physician did not provide a full history of appellant's preexisting left ankle condition and treatment or medical rationale as to how his left ankle condition was related to his work as a letter carrier.[8] The weight of medical

[6] *Id.*

[7] *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[8] *William C. Thomas,* 45 ECAB 591 (1994).

opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[9] Dr. Morris did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed condition.

Dr. Yonemura advised in a June 19, 2010 report that appellant's job as a letter carrier required him to carry loads over uneven terrain, which aggravated his left ankle condition. He stated that the November 2009 surgery improved appellant's condition such that he could return to work with restrictions. Dr. Takata indicated that appellant initially had problems with weight shifting following the November 2009 surgery and that pain and instability in the left ankle was exacerbated with prolonged walking or standing. He stated, however, that the ankle gradually stabilized and corrected the osteochondral defect of medial talar dome. The reports from Dr. Yonemura, however, are of limited probative value as he did not explain how appellant's job duties caused the diagnosed conditions. As to the reports submitted by physical therapists, these reports do not constitute medical evidence under FECA.[10] Physical therapists are not physicians as defined under FECA and their opinions are of no probative value.[11]

With regard to the claimed back condition, Dr. Takata advised on April 12, 2010 that appellant was experiencing chronic, myofascial thoracic pain and scoliosis. He also stated that appellant had right-sided low back pain, musculoskeletal in nature, with an element of upper lumbar radiculopathy; the pain was aggravated by prolonged walking or standing. Dr. Takata obtained an MRI scan and x-ray tests on May 3, 2010 which showed minimal to mild degenerative abnormalities in his lumbar and thoracic spine. He stated in his June 14, 2010 report that appellant had experienced right-sided thoracic, interscapular and flank pain for many years, but that his condition had improved with physical therapy. Dr. Takata advised that appellant's work duties had progressively exacerbated his back symptoms to the point where it had affected his ability to perform his job carrying bags of mail. His reports, however, do not sufficiently explain how appellant's diagnosed back conditions or degenerative disease were caused or contributed to by factors of his employment. Drs. Takata and Morris did not address appellant's preexisting conditions in any detail or explain how his work duties were competent to cause the diagnosed conditions.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's conditions became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[12] Causal relationship must be established by rationalized medical opinion evidence and he failed to submit such evidence.

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[9] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[10] *See* 5 U.S.C. § 8101(2) which provides: 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law; *see also Roy L. Humphrey*, 57 ECAB 238 (2005); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

[11] *Id.*

[12] *See Anna C. Leanza*, *supra* note 9.

OWCP advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Consequently, appellant has not met his burden of proof in establishing that his claimed left ankle and low/middle back conditions were causally related to his employment.

## ***CONCLUSION***

The Board finds that appellant has failed to meet his burden of proof in establish that his claimed left ankle and low/middle back conditions were sustained in the performance of duty.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the September 27 and July 15, 2010 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: October 19, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board