

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

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<b>R.K., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 13-396</b>
	)	<b>Issued: May 6, 2013</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>San Antonio, TX, Employer</b>	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On December 10, 2012 appellant filed a timely appeal of a November 8, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.<sup>2</sup>

**ISSUE**

The issue is whether appellant met his burden of proof to establish an occupational disease while in the performance of duty.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Appellant originally requested oral argument. The Clerk of the Board mailed him a letter dated December 31, 2012 asking him to confirm a continuing desire for an oral argument held in Washington, DC. Since no written response was received, the Board has in its discretion, decided the appeal on the record.

## **FACTUAL HISTORY**

On January 6, 2012 appellant, then a 60-year-old rural carrier, filed a Form CA-2 alleging that he aggravated a right ankle condition while in the performance of duty. He became aware of his condition on February 7, 2011 and realized its connection to his federal employment on June 23, 2011. Appellant stopped work on June 22, 2011 and did not return.

OWCP informed appellant in a February 9, 2012 letter that additional evidence was needed to establish his occupational disease claim. It gave him 30 days to submit a factual statement detailing the job activities that resulted in his condition and a report from a qualified physician explaining how his federal employment caused or contributed to a diagnosed injury.

In a February 17, 2012 letter, the employing establishment controverted appellant's claim on the grounds that he was on sick leave since June 23, 2011. It also asserted that he previously filed a Form CA-1 for a traumatic injury arising on June 24, 2011.<sup>3</sup>

Appellant specified in a March 6, 2012 statement that he became symptomatic on February 7, 2011. He continued to work, but experienced right ankle pain and swelling. On June 22, 2011 appellant stepped out of his postal vehicle and twisted his right foot. He reported the injury to his supervisor while off duty on June 24, 2011 and was advised to file a Form CA-1. Appellant subsequently visited his attending physician, learned that his right ankle condition was due to repetitive strain and filed a Form CA-2.

A February 7, 2011 note from Dr. Vijay A. Koli, a Board-certified internist, diagnosed maxillary sinusitis, hypertension, diabetes mellitus type 2 and osteoarthritis.<sup>4</sup> A July 1, 2011 right ankle magnetic resonance imaging (MRI) scan requested by Dr. Eddie Davis, a podiatrist, exhibited severe tibiotalar and subtalar synovitis and degeneration, lateral talar dome instability and Achilles tendinopathy.<sup>5</sup>

Dr. Luis F. Bieler, a Board-certified internist, related in a February 24, 2012 report that appellant's job duties were repetitive in nature and involved pushing and pulling carts of mail, lifting heavy trays and buckets, climbing, standing, bending, squatting and walking on uneven surfaces such as broken sidewalks. Although he was symptomatic since February 7, 2011, appellant continued to work until he twisted his right foot as he exited his postal vehicle on June 22, 2011. Dr. Bieler examined appellant's right ankle and observed significant swelling, pain and tenderness. Following a review of the medical file, he diagnosed tibiotalar and subtalar erosive synovitis, internal derangement and Achilles tendinopathy. Dr. Bieler opined that

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<sup>3</sup> OWCP File No. xxxxxx768. Subsequent letters from the employing establishment dated September 5 and 28, 2012 pointed out that appellant complained of right ankle problems before February 7, 2011 and suggested that his symptoms were due to nonwork-related hypertension, arthritic gout and/or coronary condition. It referred to a Form WH-380-F dated November 10, 2009 from Dr. James E. Williams, a Board-certified family practitioner. This document is in the case record.

<sup>4</sup> The case record also contains Dr. Koli's notes dated January 31, 2011, May 15 and 22, 2012 briefly addressing right ankle symptoms.

<sup>5</sup> In a Form WH-380-F dated July 21, 2011, Dr. Davis recommended possible ankle joint replacement and custom ankle foot orthosis.

appellant's right foot "gave out on him" on June 22, 2011 due to ongoing ankle weakness and that his diagnosed injuries were "a direct result of his repetitive duties, not a traumatic injury...."

By decision dated March 12, 2012, OWCP denied appellant's claim, finding the factual evidence insufficient to establish the alleged contributory employment factors.

Appellant requested reconsideration on March 23, 2012 and submitted copies of his March 6, 2012 statement, the July 1, 2011 right ankle MRI scan report and Dr. Bieler's February 24, 2012 report.

On March 29, 2012 OWCP denied modification of the March 12, 2012 decision.

Appellant requested reconsideration on August 6, 2012. He clarified that he was loading a truck sometime in February 2011 when he twisted his right ankle, but continued to work because he believed that the condition would improve overtime. Appellant reiterated that he initially filed a Form CA-1 due to the erroneous advice of his former supervisor. Because he had a "preexisting injury" that worsened as a result of his employment, he filed a Form CA-2.

In an October 5, 2012 report, Dr. Donald F. Dutra, Jr., a Board-certified physiatrist, related that appellant was involved in a work-related accident on February 7, 2011. He explained that the "forceful twisting and inversion of the right ankle" was consistent with ankle sprain, peroneal tendon tearing and aggravation of degenerative changes. Dr. Dutra opined that the employment incident on February 7, 2011 worsened appellant's preexisting condition because he was previously asymptomatic, adding that degeneration increased the likelihood of an acute joint injury. He ruled out hypertension, arthritic gout or a coronary condition as a contributing factor based on the objective findings, namely the July 1, 2011 MRI scan.<sup>6</sup>

On November 8, 2012 OWCP denied modification of the March 29, 2012 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing 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, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.<sup>7</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>8</sup>

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.<sup>9</sup> To establish fact of injury in an

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<sup>6</sup> Dr. Dutra remarked that appellant underwent surgery on June 27, 2012.

<sup>7</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *S.P.*, 59 ECAB 184, 188 (2007).

occupational disease claim, an employee must submit: (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>10</sup>

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>11</sup> Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.<sup>12</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.<sup>13</sup>

### ANALYSIS

The Board finds that the factual evidence does not sufficiently establish the work factors that aggravated appellant's preexisting right ankle condition.

Appellant alleged in a Form CA-2 dated January 6, 2012 that he aggravated his right ankle while in the performance of duty. OWCP informed him that additional evidence was needed to establish his occupational disease claim and afforded him opportunities to submit statements clarifying the job activities that resulted in the injury. In response, appellant detailed that he twisted his right ankle while loading a truck on February 7, 2011, his symptoms worsened as he continued to work and he twisted his foot again on June 22, 2011 when he exited a postal vehicle. He also submitted various medical reports.

Although appellant provided an approximate time frame of injury, his account lacked specificity regarding the manner in which he aggravated a preexisting right ankle condition at

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<sup>10</sup> *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

<sup>11</sup> *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>12</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>13</sup> *I.J.*, 59 ECAB 408 (2008); *supra* note 8.

work over a period of time.<sup>14</sup> Furthermore, the inconsistent medical histories cast serious doubt upon the validity of his claim. In a February 24, 2012 report, Dr. Bieler opined that appellant's diagnosed tibiotalar and subtalar erosive synovitis, internal derangement and Achilles tendinopathy were the direct result of repetitive job duties rather than a traumatic event. On the other hand, Dr. Dutra stated in an October 5, 2012 report that "forceful twisting and inversion of the right ankle" in a work-related accident on February 7, 2011 caused an acute joint injury. In view of these factual deficiencies, the Board finds that appellant failed to establish a claim.<sup>15</sup>

Appellant contends on appeal that he submitted medical evidence. As explained, he did not provide sufficient factual evidence establishing the work factors that aggravated a preexisting right ankle condition. Consequently, the Board does not need to consider the medical evidence with respect to causal relationship.<sup>16</sup> Appellant may submit new evidence or argument as part of a formal 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 did not establish that he sustained an occupational disease while in the performance of duty.

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<sup>14</sup> See *M.F.*, Docket No. 10-1514 (issued March 11, 2011); *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006). The Board notes that appellant's account is more consistent with a claim for traumatic injury than one for occupational disease: he indicated that he twisted his right ankle on two separate and distinct workdays. See 20 C.F.R. § 10.5(q) and (ee).

<sup>15</sup> *O.W.*, Docket No. 09-2110 (issued April 22, 2010).

<sup>16</sup> *D.F.*, Docket No. 10-1774 (issued April 18, 2011).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 8, 2012 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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