

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

O.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Atlanta, GA, Employer**

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**Docket No. 09-736
Issued: October 9, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 10, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 14, 2008. Pursuant to 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 has established an injury causally related to his federal employment.

FACTUAL HISTORY

The case was before the Board on a prior appeal. By decision dated August 11, 2008, the Board affirmed Office decisions dated June 6 and November 29, 2007.¹ The Board found that appellant had not submitted rationalized medical evidence on causal relationship between a

¹ Docket No. 08-861 (issued August 11, 2008).

diagnosed condition of the spine, knee, hip or feet and his federal employment. The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

Appellant requested reconsideration of his claim and submitted additional evidence. In a report dated September 11, 2008, Dr. Stephanie Brown-Johnson, a Veterans Administration (VA) physician, stated that appellant had a history of degenerative spine disease with chronic cervical and lumbar pain. She indicated radiographic studies revealed severe foramina stenosis at the C3-4 level and in the lumbar spine appellant had a Grade 1 anterolisthesis associated with a pars defect. Dr. Brown-Johnson noted degenerative joint changes bilaterally in the knees. She stated, "Over the past 26 years [appellant's] postal position has required him to lift, stoop, twist and bend repetitively and to stand for prolonged periods of time. Over time these activities have caused an increase in the degenerative changes in his joints and back. [Appellant's] current condition at the employing establishment has contributed to the progressive deterioration and pain in his back and knees."

In a report dated September 12, 2008, Dr. Jeffrey Frenchman, a podiatrist, diagnosed exostosis, tyloma/heloma molle, heel spur syndrome, hammertoe, hallux valgus and pes planus. He opined: "the veterans service-connected flatfoot condition has more likely than not contributed to the above diagnoses. It is in my medical opinion as well that the veterans conditions will more likely than not cause increase pain with prolonged walking and standing."

By decision dated November 14, 2008, the Office reviewed the case on its merits and denied modification.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.³

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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 diagnosed condition is causally related to the employment factors identified by the claimant.⁴

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁵ A physician's opinion on the issue of whether there is a

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁴ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁵ See *Robert G. Morris*, 48 ECAB 238 (1996).

causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.⁶ Additionally, in order to be considered rationalized, the 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 factors.⁷

ANALYSIS

On appeal, appellant indicated that he believed the new medical evidence from Dr. Brown-Johnson constituted rationalized medical evidence on causal relationship. While Dr. Brown-Johnson opined in her September 11, 2008 report that appellant's employment activities "have caused an increase in the degenerative changes in his joints and back," she did not provide medical rationale explaining the nature of the relationship between a diagnosed condition and the employment factors. She refers generally to a number of employment activities and to degenerative changes in both the back and other areas, without providing a complete factual and medical history. Dr. Brown-Johnson did not explain the nature and extent of any aggravation to a specific diagnosed condition from specific work factors, based on a complete and accurate history. The Board finds that the September 11, 2008 report does not constitute rationalized medical evidence.

In his September 12, 2008 report, Dr. Frenchman repeated diagnoses that were provided in his September 13, 2007 report. He referred to a veterans service-connected flatfoot condition that contributed to his feet diagnoses. The issue in this case is whether appellant's federal employment activities caused or aggravated a diagnosed condition. Dr. Frenchman does not provide a complete history, does not discuss appellant's employment activities or provide a rationalized medical opinion relating a diagnosed condition to the identified employment activities. The Board finds Dr. Frenchman's September 12, 2008 report of limited probative value to the issue presented.

Appellant asserts on appeal that the Office failed to assign great weight to a veterans physician, veterans disability rating or his veterans service-connected conditions, citing *McCartey v. Massanari*.⁸ This case involved a Social Security Administration determination on disability, finding that it must give great weight to VA disability ratings. It did not involve a claim for compensation under the Act, which is administered by the Office and the Board.⁹ As the Board explained in its prior decision, a VA disability rating itself is not determinative of benefits under the Act.¹⁰ In this case, the Office and the Board did consider the evidence from

⁶ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *Id.*

⁸ 298 F.3d 1072 (9th Cir. 2002).

⁹ *See Kelly Y. Simpson*, 57 ECAB 197 (2005).

¹⁰ *James Robinson, Jr.*, 53 ECAB 417 (2002). The Board also notes that medical evidence must be from a physician under the Act. *See Rodney P. Kephart*, 45 ECAB 893 (1994).

Dr. Brown-Johnson and all of the relevant medical evidence of record with respect to the compensation issue presented. For the reasons stated, the Board finds that the evidence was of diminished probative value and is not sufficient to meet appellant's burden of proof.

CONCLUSION

The Board finds that appellant did not submit rationalized medical evidence establishing an injury causally related to his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 14, 2008 is affirmed.

Issued: October 9, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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