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V.T., Appellant)	
)	
and)	Docket No. 12-1185
)	Issued: February 14, 2013
U.S. POSTAL SERVICE, POST OFFICE,)	
Landover Hills, MD, Employer)	
)	

Case Submitted on the Record

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On May 7, 2012 appellant filed a timely appeal from a March 28, 2012 decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

The issue is whether appellant met his burden of proof to establish that he sustained an injury to his ankles and feet in the performance of duty.

On January 23, 2012 appellant, then a 54-year-old letter carrier, filed an occupational disease claim alleging ankle tenosynovitis and Achilles tendinitis as a result of 33 years of walking on cement and up and down steps.

¹ 5 U.S.C. § 8101 *et seq.*

By letter dated February 9, 2012, OWCP informed appellant that further information must be submitted in support of his claim.

Appellant submitted a November 9, 2011 note from Dr. Phillip Omohundro, a Board-certified orthopedic surgeon, who diagnosed posterior tibial tendinitis, flat foot and osteoarthritis of the ankle. Dr. Omohundro noted that appellant was out of work from November 14 through December 1, 2011. In a December 30, 2011 note, he advised that appellant was out of work from November 14, 2011 through January 13, 2012.

In a November 5, 2011 note, Dr. John Bedeau, a gastroenterologist, stated that appellant was to be excused from work due to the complaints of pain in his feet and swollen joints and ankles. He advised appellant to rest for about one week and to return on November 14, 2011. In a December 21, 2011 form, Dr. Bedeau noted that he treated appellant on several occasions for joint pain and/or swelling; the first symptoms of which appeared on November 15, 2007. Dr. Bedeau listed diagnoses of posterior tibial tendinitis, osteoarthritis in the ankle and flat feet. He also checked the box indicating that these conditions arose out of appellant's employment.

In form reports signed on January 13 and 30 and February 21, 2012, Dr. Allen Huffman, a chiropractor, diagnosed appellant with ankle tenosynovitis/Achilles tendinitis. He noted that appellant was totally disabled and that his symptoms were the result of his work as a letter carrier. In a January 25, 2012 note, Dr. Huffman, a chiropractor, indicated that appellant was totally disabled and unable to perform his duties for the employing establishment. He submitted disability certificates.

By decision dated March 28, 2012, OWCP denied appellant's claim. It found that the medical evidence was not sufficient to establish causal relation.

LEGAL PRECEDENT

An employee seeking compensation under FECA² has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,³ including that he is an "employee" within the meaning of FECA⁴ and that he filed his claim within the applicable time limitation.⁵ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was 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 on a traumatic injury or an occupational disease.⁷

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁴ *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951). *See also* 5 U.S.C. § 8101(1).

⁵ *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, 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.⁸

Causal relationship is a medical issue⁹ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,¹⁰ must be one of reasonable medical certainty,¹¹ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹²

ANALYSIS

OWCP determined that appellant did not establish that he sustained an injury causally related to the accepted employment factors.

The Board finds that the medical reports are not sufficient to establish appellant's claim. Dr. Omohundro noted that appellant had posterior tibial tendinitis, flat foot and osteoarthritis of the ankle and that he was disabled for work; however, he never addressed whether appellant's condition was causally related to his federal employment. Dr. Bedeau diagnosed posterior tibial tendinitis, osteoarthritis in the ankle and flat feet. Similarly, he did not provide any rationalized medical opinion explaining causal relation; he merely checked a box on a form indicating that he believed that appellant's injury arose out of his employment.¹³

The Board finds that the reports of appellant's chiropractor, Dr. Huffman, are of no probative medical value. Section 8102(2) of FECA provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.¹⁴ A chiropractor cannot be considered a physician under FECA unless it is established

⁸ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁹ *Mary J. Briggs*, 37 ECAB 578 (1986).

¹⁰ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹¹ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹² See *William E. Enright*, 31 ECAB 426, 430 (1980).

¹³ See *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹⁴ 5 U.S.C. § 8101(2); see also *Michelle Salazar*, 54 ECAB 523 (2003).

that there is a subluxation as demonstrated by x-ray evidence.¹⁵ As Dr. Huffman did not diagnose a subluxation as demonstrated by x-ray, he is not considered a physician under FECA and his reports are of no probative medical value.¹⁶

Accordingly, the Board finds that appellant failed to establish that he sustained a foot condition causally related to his employment factors.

Appellant may submit new evidence or argument with a 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 failed to meet his burden of proof to establish that he sustained an injury to his ankles and feet in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 28, 2012 is affirmed.

Issued: February 14, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

¹⁵ OWCP's regulations at 20 C.F.R. § 10.5(bb), defines subluxation to mean an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray. *See Mary A. Ceglia*, 55 ECAB 626 (2004).

¹⁶ *Isabelle Mitchell*, 55 ECAB 623 (2004).