

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

D.A., Appellant)	
)	
and)	Docket No. 13-629
)	Issued: May 2, 2013
U.S. POSTAL SERVICE, POST OFFICE,)	
Vandalia, OH, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 22, 2013 appellant, through his attorney, filed a timely appeal of a December 12, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a traumatic injury while in the performance of duty on December 8, 2009.

FACTUAL HISTORY

This case has previously been before the Board. In a December 14, 2011 decision, the Board found that appellant delivered mail on December 8, 2009 as alleged, but affirmed OWCP's denial of his traumatic injury claim on the basis that the medical evidence did not

¹ 5 U.S.C. § 8101 *et seq.*

establish that this employment incident caused or contributed to a right foot condition.² Following this decision, counsel filed a formal written request for reconsideration to OWCP on October 29, 2012 and submitted new evidence.

In a January 9, 2012 report, Dr. Martin D. Fritzhand, an occupational physician and Board-certified urologist, remarked:

“[Appellant] has been a mail carrier for many years. During this period of time he has spent countless hours ambulating, standing and weight bearing. [Appellant’s] work activities have naturally resulted in degeneration of the ligaments/bones in his ankles/feet. This undoubtedly contributed to, much less caused, the injury occurring on December 8, 2009. Thus, there is certainly a causal relationship between [appellant’s] work activities and the December 8, 2009 injury.”

Dr. Gary J. LaBianco, a podiatrist, related in a September 3, 2012 report that appellant’s symptoms improved following dorsiflexory wedge osteotomy of the first metatarsal on June 7, 2012, but noted that he likely required peroneal tendon revision surgery in the future to alleviate chronic tendinitis. He also detailed that appellant sustained a severe knee injury while in military service sometime in the 1980s. Dr. LaBianco explained:

“[Appellant] began to have the foot symptoms following the knee problems that he suffered in the military. Without question the mechanics involved when walking with a limp due to the knees changed the foot mechanics over time as a form of compensation. [Appellant’s] employment with the U.S. Postal Service has continued to degrade the knees and has caused foot problems as a compensation of his gait. It is likely that he will continue to have problems with the knees and therefore will continue to suffer from the feet as well.”

He concluded that appellant was unable to perform his regular employment duties due to “the combination of the knee issues and the related diminished foot function.”³

By decision dated December 12, 2012, OWCP denied modification of the Board’s December 14, 2011 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative and substantial evidence,⁴ including that he or she is an “employee” within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.⁵ The employee must also

² Docket No. 11-1224 (issued December 14, 2011). The findings contained in the Board’s prior decision are incorporated by reference.

³ The case record contains Dr. LaBianco’s notes for the period September 1, 2011 to August 15, 2012, the findings of which were reiterated in his September 3, 2012 report. The case record also contains a physical therapist’s July 27, 2012 treatment record.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁵ *R.C.*, 59 ECAB 427 (2008).

establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was causally related to the employment injury.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁷

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.⁸

ANALYSIS

The case record supports that appellant delivered mail on December 8, 2009. The Board finds, however, that he did not establish his traumatic injury claim because the new medical evidence did not sufficiently demonstrate that this accepted employment incident caused or contributed to a right foot condition.

Dr. LaBianco indicated in a September 3, 2012 report that appellant's work for the employing establishment was causally related to his foot problems. However, he did not pathophysiologically explain how delivering mail on December 8, 2009 caused or contributed to a diagnosed condition.⁹ The need for rationalized medical opinion evidence is particularly important in this case because Dr. LaBianco detailed that appellant previously injured his knee while serving in the military in the 1980s and that his foot became symptomatic thereafter.¹⁰

In a January 9, 2012 report, Dr. Fritzhand opined that numerous hours of ambulating, standing and weight bearing resulted in degeneration of appellant's foot ligaments and bones and led to his injury on December 8, 2009.¹¹ Nonetheless, he did not fortify his conclusion with medical rationale.¹² Medical reports consisting solely of conclusory statements without

⁶ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *T.H.*, 59 ECAB 388 (2008).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994). *See also John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition).

¹⁰ The Board notes that OWCP did not accept a knee condition as employment related.

¹¹ The Board points out that Dr. Fritzhand's account that appellant's injury developed over a period of time rather than during a single workday or shift was more consistent with a claim for occupational disease than one for traumatic injury. *See* 20 C.F.R. § 10.5(q) & (ee).

¹² *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

supporting rationale are of diminished probative value.¹³ In the absence of rationalized medical opinion evidence, appellant failed to meet his burden of proof.¹⁴

Counsel contends on appeal that the December 12, 2012 decision was contrary to fact and law. The Board has already addressed the deficiencies of the claim. 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 a traumatic injury while in the performance of duty on December 8, 2009.

ORDER

IT IS HEREBY ORDERED THAT the December 12, 2012 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: May 2, 2013
Washington, DC

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

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

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

¹³ *William C. Thomas*, 45 ECAB 591 (1994).

¹⁴ The Board adds that the physical therapist's July 27, 2012 treatment record lacked probative value. A medical opinion is generally given by a qualified physician. *Charley V.B. Harley*, 2 ECAB 208, 211 (1949). A physical therapist, however, is not a physician under FECA. 5 U.S.C. § 8101(2); *Jennifer L. Sharp*, 48 ECAB 209 (1996).