

to December 19, 2001. By decision dated September 30, 2003, the Board affirmed OWCP's April 15, 2002 decision.²

This appeal involves appellant's October 11, 2002 occupational disease claim (File No. xxxxxx150) in which he alleged that he developed bilateral fourth metatarsal fractures and bilateral heel spurs causally related to lifting thousands of pounds of mail on hard flooring. In a decision dated July 21, 2008, OWCP denied the claim. In an order dated December 23, 2009, the Board set aside July 21, 2008 and February 13, 2009 decisions denying appellant's claim and remanded the case for consolidation with File No. xxxxxx719.³ In an order dated June 4, 2012, the Board set aside OWCP's July 28, 2011 nonmerit decision denying his reconsideration request and remanded the case for further merit review.⁴ The facts in the prior orders and decisions are incorporated herein by reference.

The employing establishment controverted appellant's claim. In an October 28, 2002 statement, Supervisor John Tutt reported that appellant performed an assortment of different jobs, including "dumping mail" on the belt for keyers, driving a forklift or icon, working the culling belt and preparing flat mail for the flat sort machine. On February 11, 2003 Mr. Tutt stated that appellant did not lift thousands of pounds of mail a day, noting that all mail handlers rotated on different jobs during the course of a week so that no one continuously dumped mail on a belt every day. On some days, appellant worked culling letters and flats. Other days he might drive a jeep. Usually, there was a three-man team that "dumps" mail for the keyers.

Appellant was treated by Dr. Joseph T. Corona, a Board-certified orthopedic surgeon. In a December 11, 2002 report, Dr. Corona provided a history of injury and treatment, noting that he had treated appellant since July 1996. He described appellant's duties as a mail handler for 12 years, which involved repetitive lifting and dumping of thousands of pounds of mail sacks, cycling loose mail from sacks and spending a considerable period of time walking and standing on his feet. In 1998, appellant was diagnosed with a stress fracture of the left fourth metatarsal due to repetitive standing and walking at work. He was also diagnosed with plantar fasciitis of the right heel, once again related to repetitive walking and standing for long periods of time. Appellant was subsequently diagnosed in December 1999 with left peroneal tendinitis, an irritative tendinitis of the ankles, related to his employment. In June 2001, he sustained a stress fracture of the right 4th metatarsal. In December 2001, appellant was diagnosed as having plantar fasciitis of the left heel and right retrocalcaneal bursitis of the heel. Dr. Corona opined that the conditions were directly a result of appellant's employment as a mail handler, which created stress far in excess of the activities of normal daily living.

In a decision dated July 30, 2003, OWCP found that appellant's October 11, 2002 claim was duplicative of his December 19, 2001 claim and advised him that it would not address the merits of his claim.

² Docket No. 03-1810 (issued September 30, 2003).

³ Docket No. 09-1382 (issued December 23, 2009).

⁴ Docket No. 12-151 (issued June 4, 2012).

Appellant requested an oral hearing, which was held on March 18, 2004. In a July 7, 2004 decision, an OWCP hearing representative reversed the July 30, 2003 decision and remanded the case for a merit review, finding that the current claim was not duplicative of the December 19, 2001 claim as it addressed employment activities over a different time period.

In a March 1, 2004 report, Dr. Corona provided examination findings and reviewed the results of a left foot x-ray. It revealed nonunion of the fourth metatarsal diaphysis, a bone spur and osteoarthritis. The record contains a report of an August 18, 2003 x-ray of the left foot.

In a decision dated July 21, 2008, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish a causal relationship between his diagnosed conditions and employment activities.⁵

On August 14, 2008 appellant, through his representative, requested an oral hearing, which was held on December 18, 2008. He testified regarding his duties as a mail handler from December 2001 through 2002. Appellant spent three days a week lifting, bending and culling and one day per week inside the facility, standing on hard asphalt planking floors. In a typical day, he spent six hours walking. Appellant stated that he stopped work on December 27, 2007, when the employing establishment informed him it could not accommodate his restrictions. Counsel argued that Dr. Corona's December 11, 2002 report was sufficient to establish causal relationship.

In a December 5, 2008 report, Dr. John Moglia, appellant's treating podiatrist, stated that he originally saw appellant on July 12, 2002 for two fractures of the right foot and three fractures of the left foot. He stated that the stress fracture of the left fourth metatarsal was of seven years' duration. Dr. Moglia opined that "this was an injury sustained in the course of [appellant's] job as a mail handler due to the requirements of long hours standing, repetitive bending, carrying heavy loads and having to push heavy containers with his feet."

In a December 8, 2008 report, Dr. Corona stated that appellant "developed a stress fracture of the left fourth metatarsal due to the repetitive bending, standing and walking nature of his job in the postal service. He opined that the stress fracture was "due to the very nature of this gentleman's work with the postal service over the years."

By decision dated February 13, 2009, an OWCP hearing representative affirmed the July 21, 2008 decision. He stated:

"Although it is accepted as factual that in the performance of his federal duties from approximately July 2002 through 2007, [appellant] was required to perform those employment duties identified by him at hearing, a careful and thorough review of the medical evidence of record fails to display medical evidence in which a physician displays knowledge of such duties, provides a definitive diagnosis and unequivocal opinion regarding causal relationship, supported by medical rationale. As the claimant has failed to supply sufficient medical

⁵ The Board notes that the record does not contain correspondence or medical evidence received from the date of the July 7, 2004 decision to the issuance of the July 21, 2008 decision.

evidence to support his having developed a medical condition causally related to the accepted employment activities, the District [OWCP] decision of July 21, 2008, must be AFFIRMED.”

Appellant appealed the February 13, 2009 decision to the Board. In an order dated December 23, 2009, the Board set aside the February 13, 2009 decision and remanded the case for consolidation with appellant’s December 19, 2001 claim.

By decision dated April 12, 2010, OWCP again denied appellant’s claim, finding that he failed to provide medical evidence sufficient to establish a causal relationship between his claimed foot condition and established factors of employment.

On April 19, 2010 appellant through his representative, requested an oral hearing. He submitted a July 21, 2010 work history describing his employment duties from 1987 through 2002.

At the July 20, 2010 hearing, appellant testified that he developed bilateral foot conditions as a result of 20 years of employment activities. He stated that OWCP had accepted a prior claim for a fifth metatarsal fracture in 1987 or 1988. Appellant described the job duties that placed stress on his feet.

In a July 27, 2010 report, Dr. Moglia stated that appellant had injured his right foot while working as a mail handler in 2002. He provided a history of injury and treatment and examination findings and diagnosed a nonhealing fourth metatarsal fracture and plantar fasciitis with bone spurs, of both heels. Examination revealed normal range of motion at the ankle, subtalar joint and metatarsal phalangeal joints. Pulses were palpable bilaterally. Pain was elicited with pressure directed on top of the left foot over the shaft of the fourth metatarsal. Pain was also elicited with pressure at the plantar medial aspect of both heels. Appellant’s observed gait was antalgic favoring the left foot. X-rays revealed large calcaneal spurs on the feet bilaterally. On the left foot there was a transverse defect at the proximal shaft of the fourth metatarsal, which Dr. Moglia described as a nonunion fracture. He explained that both the plantar fasciitis heel spur condition and nonunion metatarsal fracture were conditions that occurred in people who worked on their feet, bending, lifting and carrying heavy loads. Dr. Moglia opined that appellant’s condition was directly related to his job working as a mail handler.

By decision dated October 4, 2010, the hearing representative affirmed the April 12, 2010 decision finding that appellant had not provided medical evidence sufficient to establish fact of injury. He stated that appellant had failed to submit medical evidence that established that the claimed conditions of bilateral metatarsal fractures and bilateral heel spurs were related to the claimed work factors rather than off-the-job injuries.

Appellant submitted an August 16, 2010 report from Dr. Corona, who stated that appellant had been under his care for more than a decade. Dr. Corona diagnosed symptomatic left plantar heel spur syndrome, stress fractures of the right fourth and fifth metatarsals and a stress fracture of the left fourth metatarsal, which had regrettably gone on to nonunion despite prolonged care including the use of an electrical bone growth stimulator. He described

appellant's duties as a mail handler since 1987, stating that his work responsibilities involved spending one day a week driving a stand-up Jeep and several days a week standing and culling mail onto a belt. Dr. Corona understood that the surface upon which appellant stood was a hard, asphalt planked floor with worn-out anti-fatigue mats. The problem was aggravated between December 2001 and 2002, at which time appellant had the opportunity to sit down one day a week, but for administrative reasons, this opportunity was denied him.

Dr. Corona opined to a reasonable degree of medical certainty that appellant's stress fractures and heel spur were causally related to the described work activities. He explained that stress fractures were induced by repetitive micro-bending and straightening of the bone that would come about with walking, standing and running. Dr. Corona noted that appellant's work exposure with respect to his feet "certainly vastly exceeded that which would be expected on a normal day-to-day basis." He reported that bone density studies were performed, which reflected that appellant's skeleton had normal mineralization.

On October 11, 2010 Dr. Corona diagnosed an un-united stress fracture; left fourth metatarsal shaft bilateral carpal tunnel syndrome; and right ulnar nerve neuritis at the elbow. He stated that the diagnosed conditions had been corroborated with radiographic and electrophysiological studies and opined that they were causally related to appellant's work as a postal employee. Dr. Corona indicated that these stress overuse conditions were chronic in nature. He noted that appellant had been treated nonoperatively for the left foot fracture nonunion with casts and an electrical bone growth stimulator.

On July 5, 2011 appellant, through his representative, requested reconsideration.

By decision dated July 28, 2011, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted did not warrant merit review.

In a decision dated June 4, 2012, the Board set aside OWCP's July 28, 2011 decision and remanded the case for merit review.⁶

In a decision dated August 28, 2012, OWCP denied modification of its prior decision. The claims examiner found that the evidence of record failed to establish a causal relationship between the claimed work factors and a diagnosed condition. He further found that Dr. Corona's reports lacked any discussion of actual physical examination findings to support the diagnosed conditions or any discussion of appellant's medical history.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of 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 disability and/or specific condition for which compensation is claimed are causally related to the

⁶ See *supra* note 4.

employment injury.⁷ 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.⁸

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.⁹

When an employee claims that he or she sustained a traumatic injury in the performance of duty, he or she must establish the “fact of injury,” consisting of two components which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.¹⁰

In order to establish causal relationship, a claimant must submit a physician’s opinion on the issue of whether there is a causal relationship between his or her 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.¹¹

An award of compensation may not be based on appellant’s belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹²

ANALYSIS

The Board finds that this case is not in posture for decision.

⁷ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *Id.*

¹⁰ *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Deborah L. Beatty*, 54 ECAB 340 (2003). *Betty J. Smith*, 54 ECAB 174 (2002). The term “injury” as defined by FECA, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q) and (ee).

¹¹ *Id.*

¹² *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

An employee who claims benefits under FECA has the burden of establishing the essential elements of his or her claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.¹³ However, it is well established that proceedings under FECA are not adversarial compensation; OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁴

OWCP accepted that appellant was engaged in the claimed employment activities, which included walking and standing on hard asphalt planking floors for significant periods during the workday. It denied his claim, however, on the grounds that the medical evidence failed to establish a causal relationship between the work activities and his diagnosed foot condition. The Board finds that the medical evidence of record is sufficiently rationalized to warrant further development.

Dr. Corona's reports supported a causal relationship between appellant's diagnosed foot condition and the identified employment factors. On December 11, 2002 he provided an accurate history of injury and treatment, noting that he had been treating appellant since July 1996. Dr. Corona's report reflected a clear understanding appellant's duties as a mail handler. He diagnosed stress fracture of the right 4th metatarsal, plantar fasciitis of the left heel and right retrocalcaneal bursitis of the heel. Dr. Corona opined that these conditions were directly a result of appellant's employment as a mail handler, which created stress far in excess of the activities of normal daily living.

On August 16, 2010 Dr. Corona diagnosed symptomatic left plantar heel spur syndrome, stress fractures of the right fourth and fifth metatarsals and a stress fracture of the left fourth metatarsal, which had gone on to nonunion. He described appellant's duties as a mail handler since 1987, which he opined were the cause of his diagnosed condition. Dr. Corona explained that stress fractures were induced by repetitive micro-bending and straightening of the bone that would come about with walking and standing. He noted that appellant's work exposure with respect to his feet "certainly vastly exceeded that which would be expected on a normal day-to-day basis."

On October 11, 2010 Dr. Corona diagnosed un-united stress fracture, left fourth metatarsal shaft. He stated that the diagnosed condition had been corroborated with radiographic studies and opined that it was causally related to appellant's work as a postal employee. Dr. Corona explained that the stress overuse conditions were chronic in nature. He has been consistent in his diagnosis, which was supported by x-ray and reiterated his support of causal relation.

¹³ See *Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); see also *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

¹⁴ *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard*, *supra* note 13; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

Dr. Moglia opined that appellant's stress fracture of the left fourth metatarsal was of seven years' duration and was sustained in the course of his job as a mail handler due to the requirements of long hours standing, repetitive bending, carrying heavy loads and having to push heavy containers with his feet. In a July 27, 2010 report, he reviewed a history of injury and medical treatment and provided examination findings. Dr. Moglia diagnosed nonhealing fourth metatarsal fracture and plantar fasciitis with bone spurs, bilateral heels, which were confirmed by x-rays. On the left foot, he diagnosed a nonunion fracture. Dr. Moglia explained that both the plantar fasciitis heel spur condition and nonunion metatarsal fracture are conditions that occur in people who work on their feet, bending, lifting and carrying heavy loads. He opined that appellant's condition was directly related to his job working as a mail handler. Although Dr. Moglia's reports do not explain in detail how appellant's work activities caused his diagnosed condition, they strongly support a relationship between his job duties and his foot conditions.

The Board notes that, while none of the reports of appellant's attending physicians is completely rationalized, they are consistent in supporting that he sustained employment-related foot conditions and are not contradicted by any substantial medical evidence. While the reports are not sufficient to meet appellant's burden of proof to establish his claim, they raise an uncontroverted inference between appellant's foot condition and the accepted employment factors and are sufficient to require OWCP to further develop the medical evidence and the case record.¹⁵

On remand, OWCP should submit a statement of accepted facts to appellant's treating physician, or refer him to a second opinion examiner, in order to obtain a rationalized opinion as to whether his current condition is causally related to factors of his employment, either directly or through aggravation, precipitation or acceleration.

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained a bilateral foot injury in the performance of duty.

¹⁵ See *Virginia Richard*, supra note 13; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: May 10, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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