

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

S.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New York, NY, Employer**

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**Docket No. 13-2110
Issued: April 24, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 16, 2013 appellant filed a timely appeal from a June 20, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for an employment-related injury. 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 this case.²

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a right knee, ankle or foot condition in the performance of duty causally related to factors of her federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the June 20, 2013 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

On appeal, appellant noted that her physician stated that if OWCP had any questions or needed additional information in order to establish a causal relationship, it could contact his office. Because OWCP failed to do so, its review was incomplete.

FACTUAL HISTORY

On May 3, 2012 appellant, then a 53-year-old customer service supervisor, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury due to factors of her federal employment, including standing and walking in excess of 40 hours per week.

In a May 16, 2012 letter, OWCP notified appellant of the deficiencies of her claim. It afforded her 30 days to submit additional evidence and respond to its inquiries.

By letter dated May 17, 2012, the employing establishment controverted appellant's claim.

Appellant submitted narrative statements dated May 27 and 30, 2012. She advised that she sustained injury to her right leg due to her duties which required prolonged standing and walking for 8 to 12 hours a day where she worked for 28 years.

On April 26, 2012 Dr. Michael Cushner, a Board-certified orthopedic surgeon, diagnosed right knee pain with internal derangement and right foot and ankle strain. He listed a history that appellant was driving a postal truck and pushing a heavy tub of mail when she experienced pain in the back of her right knee and experienced swelling. Appellant also had right foot pain over the dorsal aspect of the fourth and fifth web space. Dr. Cushner advised that she had a possible meniscal tear causally related to the pushing at work and putting stress across the knee.

A magnetic resonance imaging (MRI) scan of the right knee dated May 7, 2012 revealed a radial tear of the posterior horn of the medial meniscus; semimembranosus/tibial collateral ligament bursitis, grade 1; chondromalacia patella and superficial venous varicosities.

In a May 10, 2012 report, Dr. Cushner reiterated his diagnoses and stated that appellant continued to have pain in her right knee. He opined that she was totally disabled for work.

On June 8, 2012 Dr. Charles Morelli, a podiatrist, advised that appellant was being treated for right foot stress fractures. He took her off work for the period May 18 to June 22, 2012.

By decision dated August 7, 2012, OWCP denied appellant's claim. It found that the evidence failed to establish the factual basis of the claim as Dr. Cushner cited to different occupational exposures than claimed. Moreover, the medical evidence did not address causal relation.

On August 30, 2012 appellant requested reconsideration. She submitted a management's schedule for the week of May 2, 2009 and position descriptions.

In an August 29, 2012 report, Dr. Morelli diagnosed stress fractures at metatarsals 2 and 3 of the right foot. He opined that appellant's work duties of standing and weight bearing caused

the injury. Dr. Morelli noted that her symptoms consisted of pain and swelling with difficulty in walking and wearing shoes. He found that appellant was unable to perform her full-work duties due to the metatarsal fractures and restricted her from walking, standing or climbing stairs.

By decision dated October 17, 2012, OWCP modified the August 7, 2012 decision to find that appellant established the work factors, as alleged. It found the medical evidence insufficient to establish a causal relationship between the diagnosed right foot conditions and the implicated employment factors.

On March 20, 2013 appellant requested reconsideration. She submitted ambulatory surgery discharge notes from Dr. Morelli dated September 9, 2011. Appellant also submitted position descriptions and management's schedule for the week of April 25, 2009.

In a May 2, 2012 report, Dr. Cushner diagnosed right knee and right foot strain. He opined that appellant's conditions were causally related to her federal employment, including pushing large tubs of mail and driving a postal truck.

On August 29, 2012 Dr. Morelli diagnosed stress fractures and previous reconstructive surgery. He advised that appellant was not able to walk, stand or climb excessively, although driving and minimal weight-bearing was allowed. Dr. Morelli noted that she had a severely arthritic and painful right knee, which impeded her ability to work effectively.

In an April 9, 2013 report, Dr. Cushner noted that appellant's right knee and right foot injury was not from one single incident, but was a repetitive-type injury causally related to her employment duties which included driving, walking, standing and pushing and pulling bins. He reported that her right knee pain started around September 2011 and worsened overtime and her right foot pain started around October 2011.

By decision dated June 20, 2013, OWCP denied modification of the October 17, 2012 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 of FECA and that an injury⁴ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

³ See *supra* note 1.

⁴ OWCP's regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁵ See *O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (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.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁷

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish a claim that federal employment factors caused or aggravated her right knee, ankle and foot conditions. Appellant submitted a statement in which she identified the factors of employment that she believed caused the condition, including standing, walking, driving, pushing, pulling and weight bearing. However, in order to establish a claim that she sustained an employment-related injury, she must also submit rationalized medical evidence which explains how her medical conditions were caused or aggravated by the implicated employment factors.⁸

Dr. Cushner diagnosed right knee, ankle and foot strain and opined that appellant's conditions were causally related to her federal employment, including pushing large tubs of mail and driving a postal truck. On April 9, 2013 he indicated that her right knee and right foot injury was not from one single incident, but was a repetitive-type injury causally related to her employment duties which included driving, walking, standing and pushing and pulling bins. Dr. Cushner reported that appellant's right knee pain started around September 2011 and worsened overtime and her right foot pain started soon after that around October 2011. He failed to provide a rationalized opinion explaining how factors of her federal employment, such as standing, walking, driving, pushing, pulling and weight bearing, caused or aggravated her right knee, ankle or foot conditions. Dr. Cushner noted that appellant's condition occurred while she was at work, but such generalized statements do not establish causal relationship because they merely repeated her allegations and are unsupported by adequate medical rationale explaining how the physical activity at work caused or aggravated the diagnosed conditions.⁹ The Board

⁶ See *D.R.*, Docket No. 09-1723 (issued May 20, 2010). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ See *O.W.*, *supra* note 5.

⁸ See *A.C.*, Docket No. 08-1453 (issued November 18, 2008); *Donald W. Wenzel*, 56 ECAB 390 (2005); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

finds that the reports from him are insufficient to establish that she sustained an employment-related injury.

Dr. Morelli diagnosed right foot stress fractures at metatarsals 2 and 3 and previous constructive surgery. He opined that appellant's work duties of standing and weight bearing caused her injuries. Dr. Morelli indicated that she was unable to perform her full-work duties due to her metatarsal fractures and restricted her from walking, standing or climbing stairs. He further indicated that appellant also had a severely arthritic and painful right knee, which impeded her ability to work effectively. As noted, the Board finds that such generalized statements do not establish causal relationship because they merely repeat her allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed conditions.¹⁰ The Board finds that the reports from Dr. Morelli are insufficient to establish that appellant sustained an employment-related injury.

The May 7, 2012 MRI scan is diagnostic in nature and therefore does not address causal relationship. As such, the Board finds that it is insufficient to establish appellant's claim.

Appellant submitted work schedules and position descriptions in support of her claim. These documents do not constitute medical evidence as they were not prepared by a physician.¹¹ As such, the Board finds that appellant did not meet her burden of proof with these submissions.

On appeal, appellant contends that her physician indicated that if OWCP had any questions or needed additional information in order to establish a causal relationship, it could contact his office directly. She has the burden of proof to establish her claim.¹² As appellant has not submitted adequate medical evidence to support her allegation that she sustained an injury causally related to the indicated employment factors, she failed to meet her burden of proof.

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 has not met her burden of proof to establish that she sustained right knee, ankle and foot conditions in the performance of duty causally related to factors of her federal employment.

¹⁰ *Id.*

¹¹ See 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

¹² See *supra* notes 3 to 7.

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 24, 2014
Washington, DC

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

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

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