

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

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**B.M., Appellant**

**and**

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

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**Docket No. 14-1371  
Issued: October 22, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 30, 2014 appellant timely appealed the April 17, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant sustained an injury in the performance of duty on or about December 30, 2013.

**FACTUAL HISTORY**

On February 27, 2014 appellant, a 64-year-old custodial laborer, filed a claim for injury to his lower back and feet, which arose on or about December 30, 2013. He explained that he

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<sup>1</sup> 5 U.S.C. §§ 8101-8193 (2006).

<sup>2</sup> The record on appeal contains evidence received after OWCP issued its April 17, 2014 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP rendered its final decision. 20 C.F.R. § 501.2(c)(1) (2012).

was on his feet maintaining two offices with no help and few breaks. As a result, appellant experienced increased lower back pain, as well as pain in the balls of his feet and bilateral heel pain.<sup>3</sup>

On March 12, 2014 OWCP informed appellant that it had not received any documentation in support of his latest claim. It advised him to submit a statement describing the employment-related activities he believed contributed to his condition. Appellant was also instructed to submit medical evidence from a qualified physician regarding his claimed condition(s). OWCP afforded him 30 days to submit the necessary factual and medical information.

OWCP did not receive any additional information within the allotted time frame.<sup>4</sup>

By decision dated April 17, 2014, OWCP denied appellant's occupational disease claim. He failed to establish fact of injury. OWCP noted that it had not received any medical evidence.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his or her 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.<sup>5</sup>

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 identified employment factors.<sup>6</sup>

### **ANALYSIS**

Appellant claimed to have aggravated his lower back and bilateral foot condition on or about December 30, 2013. He explained that he was on his feet maintaining two offices with no help and few breaks. However, appellant did not submit any medical evidence in support of his claim. On March 12, 2014 OWCP advised him to submit medical evidence from a qualified

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<sup>3</sup> Appellant had a previously accepted occupational disease claim for bilateral plantar fibromatosis, which arose on or about September 1, 2005 (xxxxxx524). He also had previously injured his left foot and lower back on May 25, 2000 (xxxxxx043). With respect to his current bilateral foot and lumbar complaints, appellant filed a notice of recurrence (Form CA-2a) under claim number xxxxxx524. Given his description of events, OWCP treated his February 27, 2014 claim as a new occupational disease injury rather than a recurrence.

<sup>4</sup> Appellant signed and returned OWCP's March 12, 2014 questionnaire, but he did not provide the requested factual information.

<sup>5</sup> 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996).

<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

physician regarding his claimed condition(s). It afforded appellant a reasonable amount of time to substantiate his claim, but no medical evidence was received within the 30-day period. Consequently, OWCP denied his occupational disease claim because the record was devoid of a medical diagnosis related to his reported occupational exposure. Under the circumstances, the Board finds that appellant failed to establish that he sustained an injury in the performance of duty.

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**

Appellant failed to establish that he was injured in the performance of duty on or about December 30, 2013.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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