

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALFRED LYLES, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Detroit, Mich.

*Docket No. 96-681; Submitted on the Record;
Issued May 26, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has established a causal relationship between his continuing foot condition and factors of his federal employment.

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;¹ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;² and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed³ or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴

In the present case, on May 20, 1976 appellant, then a 48-year-old letter carrier, filed a notice of occupational disease, Form CA-2, claiming that he sustained contracted digits in his right foot as a result of walking up and down stairs with a heavy mail bag. Appellant first sought medical attention for his condition on October 27, 1975. Subsequently, on November 7, 1975 appellant stopped work. Appellant returned to work on November 24, 1975. On April 5, 1977 the Office of Workers' Compensation Programs accepted appellant's claim for aggravation of a preexisting right foot condition. On May 3, 1976 appellant underwent foot surgery and was off work until August 13, 1976. The Office authorized payment of compensation for time lost from work from November 7 through November 25, 1975, and May 3 through August 12, 1976. After

¹ See *Ronald K. White*, 37 ECAB 176 (1985).

² See *Walter D. Morehead*, 31 ECAB 188 (1979).

³ See *Arthur C. Hamer*, 1 ECAB 62 (1947).

⁴ See generally *Lloyd C. Wiggs*, 32 ECAB 1023 (1981).

appellant's return to work his file became inactive and was retired to the Federal Records Center. In April 1978, after 17 years of being a letter carrier, appellant was transferred to the position of distribution clerk, where he remained until January 1979, when he was again transferred to the position of parcel post keyer. Appellant remained in this position until his retirement in April 1984.

By letter dated September 4, 1985, appellant asked the Office to reopen his claim. In support of his request, appellant submitted a July 18, 1985 report, and accompanying bill for treatment, from Dr. Mark C. Baxter, a podiatrist, who stated that he first saw appellant on June 16, 1985 for complaints of foot pain and left heel pain. Dr. Baxter added that x-ray examination revealed the presence of heel spurs and a pes cavus foot type. He explained that this foot type is rigid and not well adapted to shock absorption, resulting in pain after long periods of time on the foot. Dr. Baxter concluded that he successfully treated appellant with medication and supportive taping, and prescribed orthotics for long-term treatment.

In a letter dated October 29, 1985, the Office notified appellant that Dr. Baxter's report was insufficient to reopen his claim, particularly in light of the length of time that had elapsed between appellant's work injury and his request for treatment. The Office advised appellant to submit additional evidence supporting a causal relationship between his accepted condition and his ongoing foot problems.

Appellant subsequently submitted medical reports from Dr. Myron J. Bakst, a podiatrist. In separate letters dated May 16, 1986, Dr. Bakst stated that he had been treating appellant since 1976 for multiple foot problems including ingrown toenails, hammer toes, metatarsalgia, planter fasciitis, plantar calcaneal and retro calcaneal, heel spurs and arthritis of the tarsal region of the left foot. Dr. Bakst noted that in 1979 he had requested that appellant be allowed to discontinue carrying mail, and concluded that he believed that standing on his feet delivering mail had contributed to appellant's current problems. In a second letter of the same date, Dr. Bakst reiterated his conclusion that there was a "definite relationship" between appellant's foot problems and his work. In a report dated June 9, 1987, the physician again stated that it was "very possible" that there was a direct relationship between appellant's multiple symptoms and the type of work he performed for the employing establishment. In these reports Dr. Bakst did not comment on whether appellant was physically disabled from performing substantial gainful employment or indicate whether appellant would need additional medical treatment.

The Office subsequently referred the claim to an Office medical adviser who stated in a report dated September 28, 1988, that the walking involved in appellant's position as a letter carrier had temporarily aggravated appellant's preexisting foot condition causing symptoms of pain, but that there was no continuing aggravation due to the employment, as appellant had not worked since April 1984. The Office medical adviser reiterated that appellant's symptoms at the time of his review of the file were unrelated to appellant's employment.

On November 14, 1988 the Office referred appellant to Dr. Robert A. Sobel, a Board-certified orthopedic surgeon, for a second opinion evaluation. The Office provided Dr. Sobel with the relevant medical evidence of file and a statement of accepted facts. In his report dated November 30, 1988, Dr. Sobel documented appellant's history of injury and complaints. Following his examination of appellant, Dr. Sobel stated that the x-rays revealed "minimal

degenerative changes secondary to age, obesity and a history of long service as a letter carrier,” including minimal spurring at the base of the proximal phalanx of the right great toe, minimal spurring of the head of the right fifth metatarsal and bilateral spurs on the calcaneal bones both on the plantar aspect and at the point of insertion of the Achilles tendon. The physician further stated that these changes were “primarily due to age and weight and to a lesser degree associated with extensive walking that [appellant] describes as incident to his duty as a letter carrier from 1961 until the time of his retirement.” Dr. Sobel concluded that appellant was not in need of ongoing medical treatment and was physically capable of performing substantial gainful employment, with restrictions on prolonged standing, walking and climbing. In a follow-up report dated April 17, 1989, Dr. Sobel stated that appellant did not “have an impairment of sufficient severity arising out of residuals related to his employment which would preclude him from working as a distribution clerk.

Appellant subsequently submitted a brief medical report dated March 9, 1990 from Dr. Bonnie M. Warmack, an osteopath and a treating physician. In this report, Dr. Warmack stated that in her opinion, “the finding of bilateral calcaneal spurs and calcification of the Achilles tendon bilaterally [was] directly related to [appellant’s] job as a postal worker for 29 years.”

On November 30, 1992 the Office found that a conflict in medical opinion existed between appellant’s treating physicians, Drs. Bakst and Warmack, and Dr. Sobel, the Office second opinion physician. Accordingly, the Office referred appellant to Dr. L. James Roy, a Board-certified orthopedic surgeon, for an independent medical examination and a determination of whether appellant had a continuing condition attributable to his July 1975 employment-related condition. The Office provided Dr. Roy with a statement of accepted facts and a list of questions to be answered.

In his report dated December 8, 1992, Dr. Roy noted the history of appellant’s condition and documented his findings on physical examination. Dr. Roy diagnosed minimal degenerative arthritis of the right and left foot to include minimal congenital variation of cavus deformity of either arch. In addition, the physician noted that appellant had minimal laxity of the lateral ligaments about the left ankle, and calcification of the medial malleolus of the right ankle, both which suggested a prior injury, but that on direct questioning, appellant could not recall injuring either ankle in the past. Dr. Roy further opined that appellant did not require any type of orthopedic treatment and stated that if appellant were not retired, he would allow him to return to his previous, unrestricted employment as a letter carrier. In conclusion, the physician stated:

“I find no evidence, at the present time, of any significant aggravation of the condition in either foot by his employment, as a mail carrier. If any aggravation has occurred, it would be so minimal that verification would not be possible.”

On June 21, 1993 the Office issued a notice of proposed termination of compensation, on the grounds that the weight of the medical evidence, represented by the report of Dr. Roy, the

impartial medical specialist, established that appellant's ongoing foot problems were not causally related to his federal employment.⁵

In response to the Office notice, appellant submitted a statement dated July 16, 1993, received July 21, 1993, stating that he disagreed with the proposed action. Appellant submitted additional medical evidence, also received July 21, 1993, from Dr. Brian Kerman, a podiatrist, and Dr. Bonnie Warmack, an osteopath.

In a July 8, 1993 report, Dr. Kerman stated that radiographic examination from 1990 revealed the presence of plantar calcaneal heel spurs, the larger being present in the left foot, and a calcaneus of low declination angle, which predisposed appellant to a pronated-abducted gait with subsequent intermetatarsal plantar fasciitis. He further noted appellant's assertion that these symptoms originated during his federal employment, as well as his assertion that the onset of his generalized osteoarthritic joint changes was exacerbated by and during this time.

In a report dated July 16, 1993, Dr. Warmack, stated:

"[Appellant's] heel spurs, hammer toes, arthritis and intermetatarsal plantar fasciitis were aggravated from 1976 onward indeed his condition is aggravated every time he walks or stands for any significant period, and thereby is made worse not better for the wear and tear. It would be illogical to suggest, as has been done in the June 21, 1993 [memorandum] in support of the notice of proposed termination], that 'now that the claimant has not been working for several years there is no continuing aggravation and the Office [m]edical [a]dviser did not believe his present symptoms were work related.'

"In fact it is the very aggravation over the years that causes the patient to be in the condition he is in. History of trauma to the joints as described herein, to the best of my medical knowledge, will cause the type of x-ray finding we now see in this patient's ankles and feet.

"Brian L. Kerman, D.P.M., examined [appellant] on July 8, 1993 and noted for the first time that [appellant] had a predisposing gait altering condition resulting in chronic intermetatarsal plantar fasciitis. I feel that much of the trauma facultating the development of the chronic intermetatarsal plantar fasciitis like the arthritis is caused by this patients duties as a letter carrier and mail clerk with the [employing establishment]....

"How could one not believe, [appellant's] injuries are not work related if they believed that [appellant] aggravated the condition over the stated period of years either from 1976 or from 1988? The aggravation in my learned opinion became a part of the maladie in the hammer toes, heel spurs, chronic intermetatarsal plantar fasciitis and arthritis of the foot. The overall condition of and damage to

⁵ It is not clear from the record why the Office issued a notice of proposed termination of compensation in this case, as appellant has not received compensation since his return to work in 1976. Following his return to work, appellant did not file a claim for further benefits until 1985, when he asked that his claim be reopened.

[appellant's] feet from arthritis, predisposing conditions and the injuries mentioned herein can not be separated from the aggravation received during the years in question from 1976 or 1988.

“X-ray evidence supports the diagnosis on which this disability is based. Even Dr. Sobel's x-ray indicated ‘both feet reveal minimal degenerative change secondary to age, obesity and a history of a long service as a letter carrier from 1961 until the time of his retirement in 1983.’

“If [appellant] has the arthritis of the feet, heel spurs and hammer toes in 1976 and/or 1988 then he has these conditions today and the conditions are a reflection of the normal disease process plus the residual caused by an aggravation of the established condition. Neither arthritis, heel spurs or hammer toes go away in their normal course, instead these conditions get progressively worse in relationship to the degree or level of aggravation they are subjected to.”

By decision dated July 21, 1993, the Office determined that the weight of the medical evidence established that appellant's disability resulting from the injury of July 1975 ceased by and not later than July 21, 1993, and terminated continuing compensation and medical care as of that date.

It was later determined that the additional medical reports from Drs. Kerman and Warmack, received by the Office on the date of its July 21, 1993 decision, had not been considered by the Office in making its determination. Therefore, after reviewing this additional evidence, the Office issued a second decision, dated August 18, 1993, in which it found that the weight of the medical evidence, as represented by the opinion of Dr. Roy, the independent medical specialist, established that appellant's disability and need for continuing treatment resulting from the injury of July 1975 had ceased by and not later than August 18, 1993.

By letter dated September 7, 1993, appellant, through counsel, requested an oral hearing before an Office representative.

It was subsequently determined by the Branch of Hearings and Review that the case was not in posture for a hearing at that time. The case was remanded to the Office on the grounds that Dr. Roy's opinion, that he found no evidence of any “significant” aggravation of appellant's foot condition by his employment, and that “if” any aggravation had occurred it would be so minimal as to be impossible to verify, was equivocal and insufficiently rationalized to resolve the conflict in medical opinion. The Office was instructed to return this case to Dr. Roy to clarify and elaborate on his opinion regarding the causal relationship, if any, between appellant's ongoing foot condition and his federal employment.

In his supplemental report dated April 18, 1994, Dr. Roy reiterated most of his prior report with respect to his diagnosis and the issues of disability and the need for continuing treatment, and further stated, in an effort to clarify his prior opinion:

“I do not feel that the patient’s foot condition was causally related to factors of his federal employment but do represent a degenerative process, compatible with his age and congenital variation.”

In a decision dated July 13, 1994, the Office determined that Dr. Roy’s supplemental report was sufficient to represent the weight of the medical evidence and again “terminated” appellant’s compensation and medical benefits.

On July 25, 1994 appellant requested an oral hearing before an Office representative.

At the hearing, held on February 28, 1995, appellant submitted a medical report dated February 20, 1995 from Dr. Clifford M. Buchman, an osteopath, in which the physician noted the history of appellant’s foot condition and documented his findings on examination. Dr. Buchman diagnosed metatarsalgia bilaterally, bilateral plantar fasciitis and pes cavus, and stated that at that point he had no recommendations for further treatment, but that osteotomies of the second and third metatarsals might be of some benefit. Dr. Buchman further stated:

“[Appellant] shows degenerative changes in both feet with pes cavus and signs of plantar fasciitis as well as metatarsalgia. Due to this ongoing problem he is unable to stand for long periods of time. He is unable to walk. He is certainly unable to resume his previous profession as mail carrier.”

Regarding your question as to causation. In my opinion, his current problem is causally related to his previous employment. Being on his feet for prolonged periods of time has significantly aggravated the degenerative changes. He has slightly abnormal anatomy (pes cavus). This is placing stresses under the metatarsal heads and his heel area. Due to the stresses he has increasing pain and increasing pathology when he walks for long periods of time.

His condition will not improve without treatment. Treatment would be release of plantar fascia bilaterally and metatarsal osteotomies. These are major operations and may give him some relief.

In the meantime, he is permanently and totally disabled from returning to his previous job at the post office. He is unable to stand or walk for prolonged periods of time.”

In a decision dated November 13, 1995, an Office hearing representative determined, based on the weight of the medical evidence as represented by the supplemental report of Dr. Roy, the independent medical examiner, that the evidence was insufficient to establish that appellant’s ongoing foot conditions were related to factors of his federal employment.

The Board finds that appellant did not meet his burden of proof to establish that his foot condition is causally related to factors of his federal employment.

Section 8123(a) of the Federal Employees' Compensation Act provides that "[i]f there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁶ The opinion of the physician selected by the Office, called an impartial medical examiner or independent medical specialist, if sufficiently well rationalized and based upon a proper factual background, must be give special weight.⁷ In this case, the Office found a conflict in medical opinion to exist between appellant's attending physicians, Drs. Bakst and Warmack, and Dr. Sobel, the Office second opinion physician.

To resolve the conflict in the medical opinion the Office referred this claim to Dr. Roy, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a December 8, 1992 report, Dr. Roy diagnosed minimal degenerative arthritis of the right and left foot to include minimal congenital variation of cavus deformity of either arch, stated that appellant did not require any type of orthopedic treatment and added that if appellant were not retired, he would allow him to return to his previous, unrestricted employment as a letter carrier. In conclusion, the physician stated he found no evidence of any significant aggravation of the condition in either foot by his employment as a mail carrier. In his supplemental report dated April 18, 1994, Dr. Roy reiterated his prior diagnosis and recommendations, and unequivocally stated that appellant's foot condition was not causally related to factors of his federal employment but was due to his degeneration, compatible with his age and congenital variation." The Board finds that Dr. Roy's opinion is based on a complete and accurate factual background and is sufficiently well rationalized to be accorded special weight. Dr. Roy's opinion thus constitutes the weight of the medical evidence and establishes that appellant's ongoing foot condition is not causally related to factors of his federal employment. The additional evidence submitted by Dr. Buchman is insufficient to overcome the special weight accorded to Dr. Roy's opinion as the impartial medical specialist.

⁶ 5 U.S.C. § 8123(a).

⁷ *Gary R. Sieber*, 46 ECAB 215 (1994).

The decision of the Office of Workers' Compensation Programs dated November 13, 1995 is hereby affirmed.

Dated, Washington, D.C.
May 26, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member