United States Department of Labor
Employees' Compensation Appeals Board

A.N., Appellant	)	
and	)	**Docket No. 11-809**
	)	**Issued: January 17, 2012**
U.S. POSTAL SERVICE, POST OFFICE, San Juan, PR, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 11, 2011 appellant filed a timely appeal from a December 30, 2010 Office of Workers' Compensation Programs' (OWCP) merit decision which denied his claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he developed a bilateral foot condition in the performance of duty causally related to factors of his federal employment.

On appeal, appellant contends that the employing establishment's manual bid occurred before his symptoms manifested in March 2010 and that OWCP's hearing representative could not understand the claim as he works while sitting all day long.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 14, 2010 appellant, then a 48-year-old postal clerk, filed an occupational disease claim (Form CA-2) alleging that he sustained bone foot pain which he attributed to factors of his federal employment on March 23, 2010. He worked while standing almost all the time.

In an April 5, 2010 medical report, Dr. José L. Colón-Dueño, a physician Board-certified in physical medicine and rehabilitation, diagnosed bilateral plantar fasciitis. He advised appellant to avoid continuous standing for more than three hours.

On April 12, 2010 the employing establishment controverted appellant's claim.

By letter dated April 21, 2010, OWCP requested additional evidence from appellant to support his claim and allotted 30 days for submission.

In an undated narrative statement, appellant indicated that he worked while standing more than seven hours a day, five days a week. Some days he worked for six hours at the window and other days he cased mail in the morning and then worked as a window clerk in the afternoon. Appellant alleged that his bilateral foot condition developed around the first week of March. He experienced pain in the plantar area of his feet which worsened while working as a window clerk as he was standing and unable to move around. Appellant reported that he was doing more sit down work that did not hurt his feet.

In a March 23, 2010 medical report, Dr. Pablo F. Morales-Carrasquillo, a radiologist, diagnosed bilateral hallux valgus more severe on the left foot. He indicated that the joint spaces were well preserved and the bony structures were intact.

Appellant submitted physical therapy notes and illegible progress notes dated April 5 and 13, May 17, June 2, 3 and 14, 2010.

In an April 14, 2010 narrative statement, appellant reiterated that his duties as a postal clerk included casing mail, servicing the window, dispatching and providing customer service all of which required him to work standing up. He also reiterated that his bilateral foot pain symptoms began in March 2010.

An April 13, 2010 report, containing an unidentifiable signature, revealed that appellant was to work with one-hour standing and two-hour sitting intervals.

In a May 5, 2010 statement, the employing establishment indicated that appellant's duties required him to sit at least three hours a day and he held a higher level position that he consolidated and compiled reports which required sitting a majority of his day. It also noted that he took two 15-minute breaks a day and had an hour lunch.

In another May 5, 2010 statement, appellant's supervisor indicated that appellant was issued a letter of warning on March 30, 2010 for his failure to be in regular attendance and had since complained that he could not stand for prolong periods of time at work. She reported that he was responsible for the window operation. Appellant's supervisor stated that since October 2009 appellant had been complaining that he was senior and should have duties that

required him to sit. She further stated that the employing establishment had a manual bid and appellant "negated to bid on any jobs" that would have been a decrease in pay but would have afforded him the opportunity to sit for more than half his tour.

In a May 5, 2010 medical report, Dr. Colón-Dueño indicated that he had treated appellant for bilateral plantar fasciitis since April 5, 2010. Upon examination, he reported that appellant had pain at palpation over his plantar fascia enthesis and claimed decreased sensation over plantar area of both feet. Dr. Colón-Dueño advised appellant to avoid prolonged standing of more than three consecutive hours. He opined that appellant's job tasks, which included constant standing for seven hours a day, could be a contributing factor to his condition.

In a May 7, 2010 statement, an employing establishment employee reported that he conducted a predisciplinary interview with appellant regarding attendance on March 26, 2010. Appellant stated that he was then currently experiencing pain in the heel of his foot and could not stand for long periods of time.

By decision dated July 12, 2010, OWCP denied appellant's claim finding that the factual evidence submitted did not establish that factors of his employment existed as claimed and the medical evidence submitted did not establish causal relationship.

On July 23, 2010 appellant requested an oral hearing before an OWCP hearing representative.

On October 27, 2010 an oral telephone hearing was held before an OWCP hearing representative. Appellant testified that he began work at the employing establishment in 1989. Prior to January 2010, he was required to stand at work for five to six hours a day and sat for three hours a day and after January 2010 he was required to stand for six to seven hours a day. After January 2010 appellant was required to stand more as he was responsible for window operations and was doing less of a clerical job. OWCP's hearing representative held the record open for the submission of new evidence.

Subsequently, appellant submitted physical therapy and progress notes by Dr. Colón-Dueño dated May 5 and 17, 2010 which were illegible. On May 27, 2010 Dr. Colón-Dueño reiterated his diagnosis and advised appellant to keep rest from June 1 to 8, 2010. In a June 3, 2010 progress report, he advised appellant to avoid prolonged standing of more than three consecutive hours. On June 14, 2010 Dr. Colón-Dueño advised appellant to keep rest from June 14 to 25, 2010.

Dr. Miguel J. Martin-Jimerez, a podiatrist, reported on July 6, 2010 that appellant presented with complaints of right foot pain.

On October 4, 2010 Dr. Juan A. Menchaca-Martinez, an internist, reported that he examined appellant on March 24, 2010 for bilateral foot pain. Upon examination, Dr. Menchaca-Martinez observed tenderness in the heels and the metatarsus. He ordered radiographs of both feet.

By decision dated December 30, 2010, OWCP's hearing representative affirmed the July 12, 2010 decision. He accepted that appellant performed the work duties described but found that the medical evidence submitted did not establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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 injury[3] 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.[4]

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.[5]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the implicated employment factors.[6] 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 failed to meet his burden of proof to establish that he developed a bilateral foot condition in the performance of duty. The evidence supports that he worked while standing for six to seven hours a day. However, appellant has not established that his bilateral foot condition is causally related to the implicated factors of his federal employment.

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[2] *Id*.

[3] 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).

[4] *See Ellen L. Noble*, 55 ECAB 530 (2004). *See also J.C.*, Docket No. 09-1630 (issued April 14, 2010).

[5] *Id. See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[6] *See D.N.*, Docket No. 10-1762 (issued May 10, 2011).

[7] *See Victor J. Woodhams*, 41 ECAB 345 (1989). *See also D.E.*, Docket No. 07-27 (issued April 6, 2007).

Dr. Colón-Dueño diagnosed bilateral plantar fasciitis and advised appellant to avoid continuous standing for more than three hours. He reported that upon examination appellant had pain at palpation over his plantar fascia enthesis and claimed decreased sensation over the plantar area of both feet. Dr. Colón-Dueño advised appellant to avoid prolonged standing of more than three consecutive hours and opined that appellant's job tasks, which included constant standing for seven hours a day, could be a contributing factor to his condition. He did not offer a sufficient medical explanation addressing how appellant's employment caused or aggravated the diagnosed condition. Dr. Colón-Dueño's opinion was speculative. The fact that appellant's condition became apparent during a period of employment does not establish causation.[8] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[9] Although Dr. Colón-Dueño identified factors of appellant's federal employment, he failed to adequately address the issue of causal relationship as he did not explain how the factors of appellant's federal employment, such as standing for six to seven hours a day, caused or aggravated his bilateral foot condition or how his condition arose. The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between his condition and his employment factors.[10] Lacking thorough medical rationale on the issue of causal relationship, the Board finds that Dr. Colón-Dueño's reports are insufficient to establish that appellant sustained an employment-related injury.

On March 23, 2010 Dr. Morales-Carrasquillo diagnosed bilateral hallux valgus more severe on the left foot. He indicated that the joint spaces were well preserved and the bony structures were intact. Although he provided a firm diagnosis of bilateral hallux valgus, more severe on the left foot, Dr. Morales-Carrasquillo's report does not provide rationalized medical opinion evidence explaining how appellant's condition was caused or aggravated by factors of his federal employment. His medical report is therefore insufficient to meet appellant's burden of proof to establish causal relationship between his bilateral foot condition and factors of his federal employment as it does not offer an opinion on causal relationship.

Although Dr. Menchaca-Martinez treated appellant for bilateral foot pain, he did not provide a firm diagnosis and failed to directly address the issue of causal relationship as he did not provide a rationalized medical opinion explaining how factors of appellant's federal employment caused or aggravated his bilateral foot condition. Therefore, appellant did not meet his burden of proof to establish causal relationship with this submission.

Similarly, Dr. Martin-Jimerez reported that appellant presented with complaints of right foot pain but did not address the issue of causal relationship. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of

[8] *See Robert G. Morris*, 48 ECAB 238, 239 (1996). *See also M.V.*, Docket No. 10-1169 (issued December 17, 2010).

[9] *See Steven S. Saleh*, 55 ECAB 169 (2003); *Robert G. Morris*, 48 ECAB 238 (1996). *See also D.E., supra* note 7.

[10] *Id. See also Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

limited probative value on the issue of causal relationship.[11] Dr. Martin-Jimerez's medical report is therefore insufficient to meet appellant's burden of proof to establish causal relationship.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the indicated employment factors, he failed to meet his burden of proof to establish a claim.

On appeal, appellant contends that the employing establishment's manual bid occurred before his symptoms manifested in March 2010 and that OWCP's hearing representative could not understand his claim as he works while sitting all day long. As previously mentioned, causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[12] Thus, for the reasons stated above, the Board finds that appellant's arguments are not substantiated.

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 failed to meet his burden of proof to establish that he developed a bilateral foot condition in the performance of duty causally related to factors of his federal employment.

[11] *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[12] *See supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the December 30, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 17, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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