

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

R.B., Appellant

and

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

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**Docket No. 12-67
Issued: June 20, 2012**

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 October 5, 2011 appellant filed an appeal from a June 20, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for bilateral foot neuromas. 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 the case.

ISSUE

The issue is whether appellant sustained bilateral foot neuromas causally related to his federal employment.

On appeal, appellant contends that his physicians stated that his condition is due to a prior employment-related injury to his back. He worked for the Federal Government for 34 years of which 18 years were with the employing establishment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 13, 2010 appellant, then a 60-year-old senior mail processor, filed an occupational disease claim alleging bilateral Morton's neuromas causally related to his federal employment. He noted that as a result of a prior low back injury that was accepted by OWCP, he developed neuromas on both his feet. The record notes a prior claim for an injury on July 29, 2002 was accepted by OWCP on March 10, 2004 for lumbosacral disc syndrome and radiculitis.²

In a January 12, 2010 note, Dr. Craig Underset, a family practitioner, stated that appellant had been his patient since July 2002 and treated for a workers' compensation injury to his low back, right hip and leg and right foot. He listed appellant's condition as chronic. Dr. Underset stated that on September 14, 2009 appellant experienced an exacerbation to his condition with resulting acute right foot pain. Appellant reported no new injury and was subsequently diagnosed with a right foot stress fracture and neuroma. Dr. Underset opined, "It is possible ... [appellant's] chronic back/hip and right lower extremity pain syndrome with repeated overuse could have caused instability and his subsequent right foot injury."

In an April 1, 2010 memorandum, Dr. Evan M. Brody noted that appellant was referred by his primary care physician who reportedly treated appellant for a 2002 employment-related back injury. On September 21, 2009 x-rays were taken and a right foot stress fracture of the fourth metatarsal was discovered during the initial visit. Dr. Brody stated that based on appellant's description of his job duties, lifestyle and onset of pain, fracture was believed to be directly related to his duties as a mail processor. While treating appellant for the stress fracture, subsequent magnetic resonance imaging scan revealed a neuroma in both his left and right foot. Dr. Brody stated, "While this condition can be caused by long periods of standing, contributing factors such as age, gait and existing back/hip injury make it difficult to directly relate [n]euroma to [appellant's] job duties." He deferred to appellant's primary care physician for further clarification on the causal relationship between appellant's neuroma and prior back/hip injury. Dr. Brody noted that the stress fracture was caused by the repetitive motions and standing at his job. He opined that appellant's continued disability appeared to result from the untreated neuroma rather than the fracture, which had healed.

On August 4, 2010 an OWCP medical adviser stated that there was no demonstrated medical basis for a relationship between the acromioclavicular-lumbosacral disc syndrome and the interdigital neuroma/tenosynovitis of the right foot.

In a November 17, 2010 report, Dr. Underset noted that a chronic back/hip condition could lead to foot problems; but acknowledge that his expertise on the cause/direct result of neuroma formation was limited. He recommended a secondary orthopedic/podiatrist opinion with a specialist who treated neuromas on a daily basis.

By decision dated December 16, 2010, OWCP denied appellant's claim. It found that, although he had established the employment duties occurred, he failed to provide medical evidence establishing causal relationship.

² OWCP File No. xxxxxx765.

On January 11, 2011 appellant requested an oral hearing before an OWCP hearing representative.

At the hearing held on April 13, 2011 appellant discussed his treatment for the stress fracture, the neuromas on his feet and that he was off work from September 2009 until October 2010. He noted that his physicians put him on restrictions but lifted the restrictions so that he could do his job. Appellant underwent right neuroma surgery. He stated that Dr. Underset referred him to Dr. Brody for treatment of the neuromas.

By decision dated June 20, 2011, the hearing representative affirmed the December 16, 2010 decision denying appellant's claim.

LEGAL PRECEDENT

An employee seeking compensation under FECA³ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,⁴ including that he is an "employee" within the meaning of FECA⁵ and that he filed his claim within the applicable time limitation.⁶ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁷ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁸

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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.⁹

Causal relationship is a medical issue¹⁰ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether

³ 5 U.S.C. §§ 8101-8193.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁵ *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

⁶ *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁷ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

¹⁰ *Mary J. Briggs*, 37 ECAB 578 (1986).

there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,¹¹ must be one of reasonable medical certainty¹² and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹³

ANALYSIS

OWCP denied appellant's claim finding that he did not provide sufficient rationalized medical evidence to establish that his bilateral neuromas were causally related to his federal employment as a mail processor. Dr. Underset noted generally that a chronic back/hip condition could lead to foot problems. He stated that it was possible that appellant's chronic back/hip and right lower extremity pain syndrome with repeated overuse could have caused instability and resulted in a right foot injury, but acknowledged that his expertise on neuroma formation was limited. Dr. Brody, a podiatrist, similarly postulated that appellant's stress fracture was caused by his employment; but noted that his current disability was caused by his neuromas rather than a fracture, which had healed. While neuromas could be caused by long periods of standing, contributing factors such as age, gait and an existing back/hip injury made it difficult to directly relate appellant's neuroma to his job duties. These physicians did not provide rationalized medical opinion explaining how appellant's bilateral neuromas were related to his employment. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was caused by his employment or that it was an aggravation of a prior employment injury is sufficient to establish causal relationship.¹⁴ As appellant has not provided medical evidence sufficient to establish a causal relationship between his neuromas and his federal employment, OWCP properly denied his claim.

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 establish that he sustained bilateral foot neuromas causally related to his federal employment.

¹¹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹² *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹³ *See William E. Enright*, 31 ECAB 426, 430 (1980).

¹⁴ *M.P.*, Docket No. 11-1194 (issued February 23, 2012); *Walter D. Morehead*, 31 ECAB 188 (1986).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 20, 2011 is affirmed.

Issued: June 20, 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