

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

W.R., Appellant

and

**U.S. POSTAL SERVICE, MAIN POST OFFICE,
Little Rock, AR, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 12-181
Issued: June 15, 2012**

Appearances:
James W. Stanley, Jr., Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 4, 2011 appellant, through his attorney, filed a timely appeal from an October 20, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 met his burden of proof to establish that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

This case has previously been before the Board. On September 23, 2011 the Board affirmed OWCP's July 2, 2010 decision, finding that appellant did not submit sufficient medical evidence to establish his occupational disease claim for an aggravation of his knee and foot conditions. The Board also set aside OWCP's September 2, 2010 decision denying appellant's

¹ 5 U.S.C. § 8101 *et seq.*

request for reconsideration on the grounds that the August 10, 2010 report of Dr. R. Alex Dellinger, a podiatrist, was relevant and pertinent new evidence that warranted a merit review. The Board directed OWCP to conduct a merit review and issue an appropriate decision in response to the reconsideration request.² The facts of the case as set forth in the Board's prior decision are hereby incorporated by reference. Facts germane to the present appeal will be set forth as appropriate.

On November 30, 2009 appellant, then a 48-year-old customer services supervisor, filed an occupational disease claim. He alleged that he aggravated preexisting degenerative knee joint disease and foot osteoarthritis as a result of prolonged walking and standing as well as repetitive bending and stooping at work. In a July 15, 2010 report, Dr. William S. Bowen, a Board-certified orthopedic surgeon, related that appellant sustained bilateral knee osteoarthritis and synovitis while he was serving in the Navy, which necessitated surgery in the late 1980s. On examination, he observed bilateral patellofemoral joint crepitus. Prior x-rays also confirmed tricompartmental osteoarthritis. Dr. Bowen opined that appellant's job duties, namely constant walking and standing, aggravated his preexisting condition.³

In his August 10, 2010 report, Dr. Dellinger conducted a physical evaluation and observed subtalar joint osteoarthritis. He added that appellant underwent left subtalar joint fusion procedure on October 21, 2009, but sustained nonunion. Dr. Dellinger concluded that extensive walking and standing on the job "facilitated the development of [appellant's] original arthritic condition."

Following issuance of the Board's September 23, 2011 decision, OWCP received additional medical evidence. In a September 7, 2010 report, Dr. Dellinger noted bilateral foot symptoms. On examination, he observed diminished range of motion (ROM) and lateral sinus tarsi pain. Dr. Dellinger diagnosed left subtalar joint nonunion and right sinus tarsitis.⁴ Appellant underwent left foot triple arthrodesis, performed by Dr. Dellinger, on January 5, 2011. Postoperative records dated January 11 and 27, 2011 demonstrated coapted incision and osteogenesis. Dr. Dellinger remarked in an April 12, 2011 report that appellant experienced right foot pain and soreness. Radiographs exhibited subtalar joint sclerosis. In June 2 and July 29, 2011 reports, Dr. Dellinger noted findings that included a positive bilateral Mulder's sign, his treatment of appellant and diagnosed Morton's neuroma.

In a July 1, 2011 report, Dr. Jame B. Pierce, a podiatrist, conducted a physical evaluation and observed pain on palpation of the second intermetatarsal spaces of the feet as well as a positive bilateral Mulder's sign. She diagnosed plantar nerve lesion.

By decision dated October 20, 2011, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that the accepted employment factors caused or aggravated a bilateral lower extremity condition.

² Docket No. 11-170 (issued September 23, 2011).

³ Dr. Bowen essentially reiterated his examination findings and diagnosis in a March 24, 2011 follow-up report. The case record further shows that he administered viscosupplementation on April 25, May 2 and 9, 2011.

⁴ Subsequent October 15 and November 12, 2010 reports from Dr. Dellinger presented objective findings and diagnoses akin to those found in the earlier report.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁷ To establish fact of injury in an occupational disease claim, 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.⁸

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.⁹

ANALYSIS

As explained in the Board's prior decision, the record establishes that appellant's job duties entailed routine walking, standing, bending and stooping and contains firm diagnoses, including bilateral knee and subtalar joint osteoarthritis and Morton's neuroma, *inter alia*. The Board finds, nonetheless, that the medical evidence does not establish that these accepted factors caused or aggravated a bilateral knee and foot condition.

In July 15, 2010 and March 24, 2011 reports, Dr. Bowen diagnosed preexisting bilateral knee osteoarthritis and synovitis that were aggravated by appellant's federal job duties, namely walking and standing. Likewise, Dr. Dellinger concluded in an August 10, 2010 report that extensive walking and standing on the job worsened the condition. However, neither physician provided medical rationale explaining how standing, walking, bending and stooping

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *See S.P.*, 59 ECAB 184, 188 (2007).

⁸ *See R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁹ *I.J.*, 59 ECAB 408 (2008); *Woodhams*, *supra* note 6.

pathophysiologically aggravated appellant's diagnosed conditions.¹⁰ Each physician states a conclusion that appellant's work activities aggravated his underlying condition but neither physician explained why particular work factors caused or aggravated a diagnosed condition. The remaining evidence, namely Dr. Dellinger's records for the period September 7, 2010 to July 29, 2011 and Dr. Pierce's July 1, 2011 report, was of limited probative value because no opinion was offered on the issue of causal relationship.¹¹

Appellant may submit new evidence or argument as part of a formal 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 did not establish that he sustained an occupational disease in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the October 20, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 15, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

¹¹ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).