

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

J.D., Appellant

and

**U.S. POSTAL SERVICE, JFK STATION,
Boston, MA, Employer**

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**Docket No. 12-73
Issued: May 10, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 20, 2011 appellant filed a timely appeal from a September 27, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his occupational disease claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 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 sustained an aggravation of a left foot condition causally related to factors of his federal employment.

FACTUAL HISTORY

On August 12, 2011 appellant, then a 56-year-old window clerk, filed an occupational disease claim alleging that he sustained an aggravation of left foot pain and swelling as a result of prolonged standing in the course of his federal employment. He stopped work on

¹ 5 U.S.C. § 8101 *et seq.*

August 4, 2011. In a statement accompanying his claim, appellant related that he broke three of his toes in an August 2010 nonwork-related motor vehicle accident. He asserted that “[p]rolonged standing at work” caused his left foot to swell.

On August 3, 2011 Dr. Jonathan R. Perryman, a Board-certified orthopedic surgeon, released appellant for modified work standing no more than two hours per day. In a form report dated August 10, 2011, he provided a history of appellant fracturing the second, third and fourth metatarsals of the left foot on August 28, 2010. Dr Perryman diagnosed left foot pain with healed metatarsal neck fractures. He checked “yes” that the condition was caused or aggravated by employing establishment and provided as a rationale that appellant experienced pain with “prolonged standing.” In a work status report of the same date, Dr. Perryman found that appellant could return to light-duty employment standing no more than two hours a day.²

On August 15, 2011 the employing establishment controverted the claim. It noted that appellant’s left foot condition resulted from an August 2010 motor vehicle accident. The employing establishment related that he had been employed for around 17 weeks and that he worked an average of 32 hours per week sitting four hours per day and standing two hours per day.

By letter dated August 23, 2011, OWCP requested that appellant provide additional factual and medical evidence. It advised him that the evidence was currently insufficient to show that he experienced the work factors alleged to have resulted in the injury or that he sustained a medical condition due to his employment. OWCP requested that appellant submit a detailed statement describing the work activities he believed responsible for his condition. It further requested that he submit a rationalized medical report from his attending physician explaining how work factors caused or aggravated a diagnosed condition and addressing whether standing a few hours per day aggravated a preexisting condition.

In a light-duty status form dated August 23, 2011, Dr. Perryman opined that appellant could work with restrictions on standing more than two hours per day. In a duty status report of the same date, he found increased pain and swelling and advised that appellant could resume work with restrictions.

By decision dated September 27, 2011, OWCP denied appellant’s occupational disease claim after finding that he did not establish the claimed work factors and did not submit medical evidence sufficient to show a diagnosed condition causally related to his employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any

² The August 10, 2011 work status report was signed by all the physicians at Dr. Perryman’s practice.

³ *Supra* note 1.

disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ 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.⁵

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;⁶ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁷ and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁸

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant,¹⁰ must be one of reasonable medical certainty¹¹ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

ANALYSIS

Appellant filed an occupational disease claim alleging that prolonged standing at work aggravated a preexisting left foot condition. The employing establishment controverted the claim, arguing that he stood only two hours per day. By letter dated August 23, 2011, OWCP requested that appellant submit a detailed statement describing the work factors to which he attributed his condition. Appellant did not respond with any additional factual information. It is his burden to submit a detailed description of the employment factors or conditions that he believes caused or adversely affected the condition or conditions for which compensation is

⁴ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁷ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁸ *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁹ *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹¹ *John W. Montoya*, 54 ECAB 306 (2003).

¹² *Judy C. Rogers*, 54 ECAB 693 (2003).

claimed.¹³ The Board thus finds that appellant has not established the alleged employment factors of prolonged standing at work.

Additionally, the medical evidence is insufficient to establish that appellant sustained an employment-related condition. On August 3, 2011 Dr. Perryman advised that appellant could work with restrictions of standing no more than two hours per day. He further provided duty status reports and work releases on August 23, 2011 finding that appellant could work standing no more than two hours per day. Dr. Perryman, however, failed to address the cause of appellant's condition and thus these reports are of little probative value.¹⁴

In an August 10, 2011 form report, Dr. Perryman indicated that the history of injury was appellant fracturing the second, third and fourth metatarsals of the left foot on August 28, 2010. He diagnosed left foot pain and checked "yes" that the condition was caused or aggravated by employment as appellant sustained increased pain with prolonged standing at work. As discussed, however, appellant has not established the occurrence of the identified work factor of prolonged standing at work and thus Dr. Perryman's report is not based on an adequate medical history from the report. Further, Dr. Perryman did not explain how standing at work aggravated a preexisting nonemployment-related condition; consequently, his report is of little probative value.¹⁵

Appellant submitted new evidence with his appeal. The Board has no jurisdiction to review new evidence on appeal.¹⁶ 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that he sustained an aggravation of a left foot condition causally related to factors of his federal employment.

¹³ *Penelope C. Owens*, 54 ECAB 684 (2003).

¹⁴ *See K.W.*, 59 ECAB 271 (2007); *Conard Hightower*, *supra* note 9.

¹⁵ *See John W. Montoya*, *supra* note 11.

¹⁶ *See* 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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