United States Department of Labor
Employees' Compensation Appeals Board

S.M., Appellant	)	
and	)	**Docket No. 13-534**
	)	**Issued: June 21, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Merrifield, VA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On January 7, 2013 appellant, through her attorney, filed a timely appeal from a November 23, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 her burden of proof to establish that she developed Morton's neuroma of the right foot causally related to factors of her federal employment as a letter carrier.

FACTUAL HISTORY

On July 8, 2011 appellant, then a 55-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed Morton's neuroma as a result of walking two to

[1] 5 U.S.C. § 8101 *et seq.*

six hours a day on the job door-to-door. She stated that the pain would usually occur after three hours of walking. Appellant first became aware of her condition on May 31, 2008 and of its relationship to her employment on January 5, 2011. She notified her supervisor on July 15, 2011. Appellant was last exposed to the condition on July 8, 2011 after her physician limited her walking to four hours a day. An April 17, 2011 Duty Status Report (Form CA-17) was submitted which restricted appellant from walking for more than four hours a day. A June 13, 2011 disability note provided restrictions of no walking for more than three hours a day.

In an attached narrative statement, appellant reported that she first developed Morton's neuroma in May 2008 in her right foot after having to walk house-to-house and navigating staircases on her route. In July 2009, she underwent surgery to have the neuroma removed by Dr. Seth Rubenstein, a Board-certified podiatric surgeon. Appellant stated that, after eight weeks of leave, she returned to work with no restrictions but continued to have pain at the surgical site. She sought treatment with Dr. Mariam Popal, a podiatrist, who referred her for a magnetic resonance imaging (MRI) scan which showed a small stump neuroma had formed, as well as inflammation and capsulitis. Appellant underwent physical therapy treatments in March 2010 which helped to alleviate her pain. In the fall of 2010, she stated that she noticed occasional twinging and electrical jolt sensations in her foot next to the surgical area. Upon examination, Dr. Popal diagnosed another neuroma in the adjacent metatarsal space. Appellant stated that she discussed her condition with her supervisor and realized that the neuromas could be a result of her employment duties. She noted that the pain associated with her neuroma varied from day-to-day, typically getting stronger as she walked her route. Appellant described her duties as a carrier technician, noting that she worked five days a week for eight hours a day, walking five different routes on a regular basis. The routes ranged from two and a half hours to six hours each day, depending on the mail volume. Appellant was required to walk door-to-door, up and down sidewalks, cross lawns which were often uneven and pivot at each mailbox. She stated that the five routes consisted of about 500 to 800 deliveries each. Four of the routes had some apartment buildings which required walking between the buildings and up and down the stairs. Appellant concluded that her employment conditions caused the constant movement of the bones in her foot which irritated her nerve.

By letter dated August 4, 2011, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

Appellant responded to OWCP's questionnaire in a September 18, 2011 narrative statement. She stated that, since June 2005, she was a utility carrier for five different routes. Appellant stated that, about four years ago, the routes had various adjustments such as the flats sequencing sortation (FSS) which resulted in longer routes, more deliveries and increased walking. She stated that her second neuroma occurred over the past two years and her route schedule varied weekly from two and a half to four and a half hours of walking. Since 2002, appellant had not participated in running as a sport, noting that she used to occasionally participate in marathons and had no prior problems with her foot. She stated that she did not have any other hobbies or activities which would cause her condition and would often sit with her feet propped up after her shift was over.

By decision dated October 26, 2011, OWCP denied appellant's claim on the grounds that the evidence was insufficient to establish that she sustained an injury. It found that the occupational exposure occurred as alleged; however, that the evidence failed to provide a firm medical diagnosis which could be reasonably attributed to the accepted employment factors.

By letter dated November 4, 2011, appellant, through counsel, requested a telephone hearing before the Branch of Hearings and Review.

In medical reports dated February 26, 2010 to January 5, 2011, Dr. Popal reported that appellant had been treated by another physician in July 2009 for her neuroma second interspace right foot, which was excised and removed. Appellant complained of pain in the right foot and the physician referred her for an MRI scan. In a March 1, 2010 diagnostic report, Dr. Steven Meyers, a Board-certified diagnostic radiologist, reported that an MRI scan of the right foot revealed mild stump neuroma, mild capsulitis of the right second MTP joint with thickening and scarring at its plantar lateral aspect and mild intermetatarsal bursitis in the third interspace. In a July 2, 2010 report, Dr. Popal diagnosed Morton's neuroma third interspace of the right foot.

At the February 6, 2012 hearing, appellant testified that she had worked for the postal service for over 11 years as a letter carrier and first began noticing pain in her right foot on May 31, 2008. She provided details regarding her neuroma surgery and postoperative treatment and began seeing Dr. Richard Mendelsohn., a podiatrist, in March 2011. Appellant testified that she did not have any other injuries to her right foot prior to or after 2008 other than the two neuromas that developed. Her attorney stated that he would be submitting a report from Dr. Mendelsohn which provided an opinion on the cause of appellant's condition. The record was held open for 30 days.

In support of her claim, appellant submitted medical reports dated February 29, 2008 to January 21, 2012 from Dr. Rubenstein who documented that appellant's right heel pain began in February 2008 after appellant had to use snow boots for two weeks due to inclement weather while delivering mail. Dr. Rubenstein noted that appellant was a postal carrier and was on her feet for extensive periods of time during the day. In a July 16, 2008 report, he reported that appellant complained of mild pain on palpation on the right foot which began after moving her household in May. Appellant was diagnosed with clinical neuroma second interspace of the right foot. Her pain was intermittent, becoming worse towards the end of the day. Appellant was treated with injections and orthopedic shoes but would complain of increased pain after standing on her feet all day, mostly occurring after work. In a December 2, 2008 report, Dr. Rubenstein noted that appellant worked for the postal service and was on her feet for 8 to 10 hours a day. On July 19, 2009 he performed an excisional biopsy of the intermetatarsal neuroma of the right foot. Postsurgery appellant complained of pain in her right foot typically starting later in the day. In an October 26, 2009 report, Dr. Rubenstein noted that appellant had relief in her foot for two weeks but then developed achy by the end of the day, noting bilateral due to walking all day. He further stated that she stood on her feet for nine hours per day and received injections to alleviate the pain. In a January 21, 2010 report, appellant complained of increased pain on the ball of her right foot similar to what she experienced prior to her surgery.

In a February 2, 2012 medical report, Dr. Mendelsohn related that he had been treating appellant for the past year for a number of ailments related to the amount of ambulation she

performed in her daily duties as a postal worker. He noted that since 2008 appellant suffered from chronic neurological damage to her right foot that required surgical intervention with the excision of a traumatically caused nerve lesion, commonly referred to as a Morton's neuroma. Unfortunately due to her employment, appellant continued to cause irritation to the remaining nerve root leading to the development of a stump neuroma, inflammation and capsulitis as evidenced by her MRI scan. Dr. Mendelsohn noted that appellant underwent physical therapy treatments in March 2010 which helped relieve some of her pain as she continued to perform her duties as a postal worker which required walking long distances on hard surfaces throughout the day.

Appellant was examined by another podiatrist who determined that she developed a second neuroma in the adjacent metatarsal space in addition to a continuation of inflammation of the remaining nerve branch that was originally operated on in 2009. The treating physician recommended treatment of the nerve with spinal alcohol to help permanently relieve her from the chronic discomfort. Appellant presented to Dr. Mendelsohn in March 2011 for treatment of this recalcitrant stump neuroma and a new Morton's neuroma. Dr. Mendelsohn diagnosed a Morton's neuroma in appellant's second intermetatarsal space of the right foot and an irritated stump neuroma in her third intermetatarsal space of the right foot. He agreed with her previous physician that given her chronic condition, alcohol injections might be beneficial in relieving the pain since the previous cortisone injections were only temporarily effective. Dr. Mendelsohn noted that, due to appellant's employment as a postal worker, the success rate of the injections might not be as effective as they would be if she was off her foot. Appellant underwent a series of sclerosing alcohol injections into her second and third intermetatarsal spaces of her right foot starting in March 2011 through June 2011. She proceeded to get improvement in the right foot which was only temporary. In June 2011, Dr. Mendelsohn advised appellant to limit her activity and reduce her ambulation to allow the alcohol injections to be effective. Appellant returned for a follow-up visit in August 2011 which revealed that the effects of the sclerosing alcohol had started to wear off and exacerbation of the original neuroma pain was occurring.

Dr. Mendelsohn determined that appellant had continued to walk on her foot during her job duties as a postal worker which continued to cause irritation to the remaining nerve root on the third intermetatarsal space and reinjured the nerve that had successfully been treated with the alcohol injections in early 2011. He recommended that she try to find a position in the postal service that allowed her to sit most of the time and did not put any strain on the ball of her foot where she would reinjure the nerve. Dr. Mendelsohn opined that appellant would continue to develop neurological damage to her foot as a result of ambulating for long periods of time on hard surfaces. Surgical intervention had minimal success as the nerve has already been removed and was continually getting reinjured through trauma. Dr. Mendelsohn noted that numerous studies of nerve damage of the foot determined that ambulation for long periods of time could permanently damage the intermetatarsal nerves leading to permanent disability. In order to avoid permanent damage to her right limb and allow her to function in a normal fashion throughout life, Dr. Mendelsohn recommended that appellant avoid standing for the long periods of time as she had been doing so in her job.

By decision dated April 5, 2012, the hearing representative affirmed OWCP's October 26, 2011 decision finding that the evidence of record failed to establish that appellant's diagnosed condition was causally related to factors of her federal employment.

By letter dated April 16, 2012, appellant, through counsel, requested reconsideration of OWCP's decision. In support of her claim, appellant resubmitted various medical documents already of record as well as a statement from her noting that she had missed 16 weeks of work as a result of her foot surgery.

By decision dated November 23, 2012, OWCP affirmed the April 5, 2012 decision finding that the evidence of record failed to establish that appellant's diagnosed condition was causally related to factors of her federal employment.

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[2] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.[3]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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.[5]

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[6] The opinion of the physician must be one of reasonable medical certainty

[2] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[3] *Michael E. Smith*, 50 ECAB 313 (1999).

[4] *Elaine Pendleton*, *supra* note 2.

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

[6] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

ANALYSIS

The Board finds that this case is not in posture for decision as to whether appellant sustained an injury in the performance of duty.

An employee who claims benefits under FECA has the burden of establishing the essential elements of her claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.[8] However, it is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[9]

In its November 23, 2012 decision, OWCP denied appellant's claim for failing to establish that her condition was causally related to her repetitive work activities as the medical evidence did not provide a clear diagnosis nor provide full details of appellant's ongoing employment duties. The Board finds that the medical evidence of record is sufficient to require further development of the case record.

Appellant provides specific details of her work duties and this description was not contradicted by the employing establishment.

In a February 2, 2012 report, Dr. Mendelsohn reported that he had been treating appellant for the past year for a number of ailments related to the amount of ambulation she performed in her daily duties as a postal worker. He provided a detailed medical history noting that, since 2008, she suffered from chronic neurological damage to her right foot that required surgical intervention with the excision of a traumatically caused nerve lesion, commonly referred to as a Morton's neuroma. Dr. Mendelsohn opined that, due to her employment, appellant continued to

[7] *James Mack*, 43 ECAB 321 (1991).

[8] *See Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); *see also Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

[9] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard*, *supra* note 8; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

cause irritation to the remaining nerve root leading to the development of a stump neuroma, inflammation and capsulitis as demonstrated by MRI scan.

Dr. Mendelsohn noted that appellant underwent physical therapy treatments in March 2010 which helped relieve some of her pain as she continued to perform her duties as a postal worker which required walking long distances on hard surfaces throughout the day. Appellant then developed a second neuroma in the adjacent metatarsal space in addition to continuation of inflammation of the remaining nerve branch that was originally operated on in 2009. She was treated with cortisone and spinal alcohol injections to help relieve her from the chronic discomfort and presented to Dr. Mendelsohn in March 2011 for treatment of this recalcitrant stump neuroma and a new Morton's neuroma. Dr. Mendelsohn diagnosed a Morton's neuroma in appellant's second intermetatarsal space of the right foot and an irritated stump neuroma in her third intermetatarsal space of the right foot.

As previous cortisone injections had proved temporary, appellant underwent a series of sclerosing alcohol injections in March 2011 through June 2011 which also only provided temporary relief. Dr. Mendelsohn noted that, due to appellant's employment as a postal worker, the success rate of the injections would not be as effective as if she was off her foot. He advised her to limit her activity and reduce her ambulation to allow the alcohol injections to be effective. Appellant returned for a follow-up visit in August 2011 which revealed that the effects of the sclerosing alcohol started to wear off and exacerbation of the original neuroma pain was occurring.

Dr. Mendelsohn determined that appellant had continued to walk on her foot during her employment duties as a postal worker which continued to cause irritation to the remaining nerve root on the third intermetatarsal space and reinjured the nerve that had successfully been treated with the alcohol injections in early 2011. He recommended that she try to find a position in the postal service that allowed her to sit most of the time and did not put any strain on the ball of her foot where she would reinjure the nerve. Dr. Mendelsohn opined that appellant would continue to develop neurological damage to her foot as a result of ambulating for long periods of time on hard surfaces and could permanently damage the intermetatarsal nerves leading to permanent disability. Surgical intervention had minimal success as the nerve had already been removed and was continually getting reinjured through trauma. In order to avoid permanent damage to her right limb and allow her to function in a normal fashion throughout life, Dr. Mendelsohn recommended that appellant avoid standing for long periods of time as she had been doing so in her job.

Dr. Mendelsohn provided a detailed review of appellant's medical history, documenting treatment of her first Morton's Neuroma in 2008 and her second neuroma in 2010. He opined that she was developing neurological damage to her foot as a result of ambulating for long periods of time on hard surfaces as required by her job in the postal service. Dr. Mendelsohn addressed appellant's recurrent condition, noting that surgery and injections were unsuccessful because of her continued employment duties which required walking long distances on hard surfaces throughout the day. Thus, as a result of her employment, appellant continued to cause irritation to the remaining nerve root leading to the development of a stump neuroma, inflammation and capsulitis. Dr. Mendelsohn noted that surgical intervention had minimal success as the nerve has already been removed and was continually getting reinjured through

trauma. He recommended that appellant try to find a position in the postal service that would allow her to sit most of the time and did not put any strain on the ball of her foot where she would reinjure the nerve.

The Board notes that, while none of Dr. Mendelsohn's reports are completely rationalized, they are consistent in indicating that appellant sustained an employment-related injury and are not contradicted by any substantial medical or factual evidence of record.[10] While he did not fully describe the mechanism of the injury, he provided a clear, if limited, opinion based on examination findings and an accurate factual and medical background, that appellant's Morton's neuroma was caused or at least aggravated as a result of her federal employment duties as a letter carrier. Dr. Mendelsohn demonstrated a general understanding of appellant's work duties and discussed how these duties would cause appellant's injuries. He provided a medical history and based his findings on diagnostic testing and physical examination. Dr. Mendelsohn noted treating appellant for a number of ailments related to the amount of ambulation she performed in her daily duties as a postal worker, walking long distances on hard surfaces throughout the day.

The treatment notes submitted from Dr. Popal and Dr. Rubenstein accurately document appellant's continued treatment for Morton's neuroma, the unsuccessful results procured through surgery, injections and physical therapy and noted appellant's complaints of intermittent pain as a result of standing for long periods of time, all of which were detailed in Dr. Mendelsohn's report. Though Dr. Mendelsohn's reports are not sufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between her condition and the identified employment factors and are sufficient to require OWCP to further develop the medical evidence and the case record.[11]

On remand, OWCP should prepare a statement of accepted facts which includes a description of appellant's work duties and refer appellant to an appropriate medical specialist for a second opinion as to whether her current condition is causally related to factors of her employment, either directly or through aggravation, precipitation or acceleration. Following this and any other further development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for a decision as to whether appellant developed a right foot condition causally related to factors of her federal employment as a letter carrier.

[10] *Frank B. Gilbreth*, Docket No. 02-1310 (issued May 14, 2003).

[11] *See Virginia Richard*, *supra* note 9; *see also Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the November 23, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: June 21, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board