

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

A.G., Appellant	)	
	)	
and	)	<b>Docket No. 13-1398</b>
	)	<b>Issued: September 19, 2013</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Collinsville, IL, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 28, 2013 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) decision dated May 9, 2013 denying his claim for an occupational disease. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 injuries to the knees, feet and ankles causally related to factors of his federal employment.

**FACTUAL HISTORY**

On January 9, 2013 appellant, then a 45-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that his preexisting conditions were aggravated as a result of extensive walking required by his employment, resulting in extreme pain of his lower extremities, specifically pain and swelling of the knees, feet and ankles. He first became aware

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

of his condition and of its relationship to his employment on July 13, 2011. Appellant notified his supervisor on January 10, 2013.

In support of his claim, appellant submitted a Form CA-17, duty status report, dated January 9, 2013, stating that he was released to work with limitations. The physician's signature on this form was illegible. The description of clinical findings on the form read "L knee."

In a narrative statement dated January 9, 2013, appellant reported that he began to experience pain in his knees, legs, feet and ankles once he began carrying mail in July 2011, and that the condition of his employment directly responsible for his occupational disease was prolonged and excessive walking. He stated that the parts of his body affected were both knees, feet, ankles, the lower back and the pelvis region. Appellant noted that he was a 50 percent service-connected disabled veteran who was honorably separated from the United States Marine Corps on February 21, 1990 due to complications of his lower extremities and that he had not received any medical treatment for his condition since separation from the Marine Corps. He explained that his occupational disease claim was not filed within 30 days after first realizing that the occupational disease was aggravated by his employment because he was not aware of the severity of the condition at the time of onset.

On February 1, 2013 the employing establishment challenged appellant's claim on the basis that he stated on his Form CA-2 that he had a preexisting condition that was aggravated by excessive walking.

On February 21, 2013 OWCP requested additional medical evidence from appellant. Appellant did not submit any further evidence.

By decision dated May 9, 2013, OWCP denied appellant's claim, finding that the medical evidence was not sufficient to establish that a medical condition was diagnosed in connection with the events alleged to cause his occupational disease, because he did not submit any medical evidence containing a medical diagnosis in connection with such events. It noted that the Form CA-17, dated January 9, 2013, did not contain a diagnosis.

### **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.<sup>2</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.<sup>3</sup>

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

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<sup>2</sup> Gary J. Watling, 52 ECAB 278, 279 (2001); Elaine Pendleton, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> Michael E. Smith, 50 ECAB 313, 315 (1999).

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.<sup>4</sup> 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.<sup>5</sup>

### ANALYSIS

The Board finds that the medical evidence of record is insufficient to establish an occupational disease of appellant's knees, feet and ankles.

By decision dated May 9, 2013, OWCP denied appellant's claim for occupational disease, finding that the evidence was insufficient to establish that a medical condition was diagnosed in connection with the events alleged to cause his occupational disease.

Appellant submitted statements identifying employment factors alleged to have caused or contributed to the presence or occurrence of his claimed occupational disease, including Form CA-2 and his narrative statement. In a narrative statement dated January 9, 2013, he reported that he began to experience pain in his knees, legs, feet and ankles once he began carrying mail in July 2011, and that the conditions of his employment directly responsible for his occupational disease included prolonged and excessive walking. Appellant stated that the parts of his body affected were both knees, feet, ankles, the lower back and the pelvis region. He noted that he was a 50 percent service-connected disabled veteran who was honorably separated from the United States Marine Corps on February 21, 1990, due to complications of his lower extremities, and that he had not received any medical treatment for his condition since separation from the Marine Corps.

However, appellant did not submit medical evidence establishing a diagnosed condition, nor did he submit medical evidence establishing that a diagnosed condition was causally related to the employment factors he identified. The January 9, 2013 Form CA-17 does not contain a diagnosis: it contains only a description of clinical findings reading "L knee" and certain work limitations. The physician's signature on this form was illegible and his or her identity could not be ascertained from other documents in the case record. The Board has previously explained that a report with an illegible physician's signature has no probative medical value, if the author cannot be identified as a physician.<sup>6</sup> Appellant submitted no other medical evidence in support

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<sup>4</sup> See *Elaine Pendleton*, *supra* note 2.

<sup>5</sup> See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>6</sup> *C.V.*, Docket No. 13-912 (issued July 29, 2013); see also *Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384 (1960).

of his claim. Therefore, the evidence of record is insufficient to establish that he sustained a diagnosed condition causally related to the alleged factors of employment.

Appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty.

Appellant submitted new evidence following the May 9, 2013 OWCP decision. However, the Board lacks jurisdiction to review evidence for the first time on appeal.<sup>7</sup> 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 did not meet his burden of proof to establish that his claimed injuries to the knees, feet and ankles are causally related to factors of his employment as a mail carrier.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 19, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>7</sup> 20 C.F.R. § 501.2(c).