

ISSUE

The issue is whether appellant established an injury to his left foot, ankle or elbow causally due to his federal employment.

FACTUAL HISTORY

On December 20, 2011 appellant, then a 54-year-old letter carrier, filed an occupational disease claim alleging that he suffered from tendinitis/tibial posterior dysfunction causally related to his federal duties. He noted that his left foot, elbow and ankle started to hurt while delivering mail. Appellant indicated that he filed a claim for a traumatic injury on October 4, 2011, but that he filed using the wrong form so he was now filing an occupational disease claim. By memorandum dated January 24, 2012, the employing establishment indicated that appellant had previously filed a traumatic injury claim on October 4, 2011 for the same occurrence which was denied by OWCP.³ The employing establishment further controverted the claim because it was unaware of when and how appellant was injured.

By letter dated February 8, 2012, OWCP asked that appellant submit evidence in support of his claim, including medical evidence. Appellant did not file a timely response to this letter.

In a decision dated March 19, 2012, OWCP denied appellant's claim.

After the decision was issued, appellant submitted physical therapy notes. He also submitted a March 6, 2012 duty status report wherein a physician with an illegible signature indicated that appellant could return to full-time work duties.

Appellant submitted a letter dated November 29, 2011, a letter previously submitted to OWCP in appellant's other claim, wherein he indicated that on September 28, 2011, while delivering mail, he felt a pain in his left foot below the ankle on the right side of the foot. He noted that he did not sustain a traumatic injury, that within a minute or two the pain subsided temporarily so he kept working, but that the pain returned at the end of the day. Appellant alleged that his injury was caused by walking and carrying his mailbag loaded with about 50 to 60 pounds of parcels on a repetitive daily basis.

In a February 28, 2012 report, Dr. William J. O'Brien, a Board-certified surgeon, diagnosed cystic changes at navicular, tenosynovitis posterior tibial tendon, difficulty walking and left foot pain. He opined within a reasonable medical certainty that appellant suffered a repetitive work injury to his left foot during his work-related duties at the employing establishment. Dr. O'Brien noted that Dr. Mark Burton, a podiatrist, took a history and performed a physical examination, and concluded that appellant's medical condition was a direct result of his work duties.

³ On July 15, 2013 the Board affirmed the denial of appellant's claim for a traumatic injury that appellant alleged occurred on September 28, 2011 when, while delivering mail, his left foot started to hurt; OWCP File No. xxxxxx996. Docket No. 13-845 (issued July 15, 2013).

On May 4, 2012 appellant, through counsel, requested reconsideration of the March 19, 2012 decision denying his claim. Counsel contended that Dr. O'Brien's report clearly established a causal relationship between appellant's work duties on September 28, 2011 and his left foot and ankle condition.

In an August 14, 2012 report, Dr. Michael B. Fischer, an osteopath, listed diagnoses of left foot tendinitis/tenosynovitis; left foot pain; and left ankle sprain and strain. He opined that within a reasonable degree of medical certainty the listed injuries were a direct result of the work-related accident which occurred on September 28, 2011. Dr. Fischer noted that appellant had performed his work for 31 years and walked approximately 6 miles a day five days a week. He opined that appellant sustained repetitive trauma to his left foot and ankle which became most painful on September 28, 2011.

By decision dated April 9, 2013, OWCP found that appellant had experienced the employment factors as alleged and that appellant had established a diagnosed condition. However, it denied his claim because he failed to establish a causal relationship between the accepted employment factors and the diagnosed condition.

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.⁴ 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.⁵

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁶ 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.⁷

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

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *See S.P.*, 59 ECAB 184, 188 (2007).

⁷ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

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.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof as the medical evidence of record is insufficient to establish that he sustained a diagnosed condition causally related to the accepted employment incident. Initially, the Board notes that the duty status report of March 6 2012 is not acceptable medical evidence as it lacks proper identification.⁹ The Board has held that reports that bear illegible signatures cannot be considered probative. Appellant also submitted physical therapy notes. The Board has held that treatment notes signed by a physical therapist are not considered medical evidence as these providers are not a physician under FECA.¹⁰

Dr. O'Brien concluded that appellant's repetitive work injury to his left foot was sustained during his work-related duties at the employing establishment but he provided no medical rationale or objective tests that supported his conclusion. He appeared to have relied upon the opinion of Dr. Burton in reaching his conclusion. There is no report in the record by a Dr. Burton.

Dr. Fischer listed diagnoses of left foot tendinitis/tenosynovitis; left foot pain and left ankle sprain and strain, and opined within a reasonable degree of medical certainty that these injuries were the direct result of the work-related accident that occurred on September 28, 2011. However, his opinion is unclear in that he initially indicated that appellant sustained a work-related accident on September 28, 2011, and then stated that there was a direct causal relationship between appellant's symptoms and the ongoing work he performed for the past 31 years. Appellant indicated that there was no traumatic injury on September 28, 2011. Dr. Fischer also referred to Dr. Burton's treatment of appellant, but Dr. Burton's treatment notes are not in the record. Accordingly, as he has failed to submit a well-rationalized medical opinion in support of a causal relationship between his federal duties and his injury, he has not met his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury to his left foot, ankle or elbow causally related to his federal employment.

⁸ *I.J.*, 59 ECAB 408 (2008); *supra* note 5.

⁹ *R.W.*, Docket No. 13-861 n.11 (issued July 2, 2013).

¹⁰ *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

ORDER

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

Issued: January 17, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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