United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	
U.S. POSTAL SERVICE, POST OFFICE, Birmingham, AL, Employer	)	**Docket No. 13-1884** **Issued: January 10, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 13, 2013 appellant filed a timely appeal from a July 19, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his occupational disease claim. 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 established a right foot condition in the performance of duty.

On appeal, appellant contends that OWCP did not properly develop the medical evidence and that a second opinion physician did not perform a thorough examination. He asserts that he meant to file a claim for back and leg injuries, not a claim for hammertoe deformities.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 30, 2010 appellant, then a 59-year-old supervisor, filed a traumatic injury claim for a sharp pain in his right foot which he attributed to walking at work. In a November 8, 2010 report, Dr. Maurice Wainwright, an attending podiatrist, noted a history of hammertoes since 2002, with surgery for hammertoe corrections and surgical amputation of the second toe of the right foot. He noted that "walking aggravates pain." In a December 13, 2010 report, Dr. Wainwright noted that a December 1, 2010 nerve conduction velocity (NCV) study showed mild-to-moderate sensorimotor polyneuropathy of both lower extremities. He diagnosed hammertoes, foot pain, neuropathy and status postsurgical amputation of the right second toe at the interphalangeal joint. OWCP developed this as claim number xxxxxx474.

OWCP initially denied the claim by decision dated December 30, 2010.[2] Following additional development, it issued a July 25, 2011 decision remanding the case to obtain a second opinion. OWCP also found that the claim was properly one for an occupational disease and not a traumatic injury.[3]

On remand of the case, OWCP obtained a second opinion from Dr. H. Leslie Fowler, a Board-certified orthopedic surgeon. In an August 23, 2011 report, Dr. Fowler reviewed the medical record and a statement of accepted facts. He performed a detailed orthopedic examination of the lower extremities, noting hammertoe deformities in both feet, partial surgical amputation of the second right toe and bilateral foot pain. Dr. Fowler diagnosed hammertoe deformity of the right foot and status postsurgical amputation of the second toe of the right foot. He opined that the hammertoe deformity was caused by a preexisting muscle/tendon imbalance and not caused or aggravated by walking or standing at work.

In an October 6, 2011 report, Dr. Wainwright opined that appellant's hammertoes could have been caused by a muscle/tendon imbalance or by trauma. He characterized appellant's bilateral foot neuropathy as a gradual onset condition that became fully symptomatic by November 3, 2010. Dr. Wainwright acknowledged that he could not "say for certain if the excessive walking and standing contributed to the actual neuropathy" but it did cause pain and discomfort.

By decision dated November 1, 2011, OWCP denied appellant's traumatic claim finding that causal relationship was not established. Dr. Fowler's opinion constituted the weight of the medical evidence. It found that Dr. Wainwright did not adequately explain how walking or standing at work caused the claimed hammertoe deformities.

In a November 21, 2011 letter, appellant requested a hearing held on March 14, 2012. At the hearing, he asserted that walking at work accelerated the development of his hammertoe condition.

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[2] Appellant retired from the employing establishment effective December 31, 2010.

[3] On March 28, 2011 appellant filed an occupational disease claim (Form CA-2) for a right foot condition, noting that he mistakenly filed a traumatic injury claim in October 2010.

On December 9, 2011 appellant filed an occupational disease claim for a right foot condition which he attributed to prolonged walking at work while delivering mail from 2000 to 2007, then standing at work when he was promoted to supervisor. OWCP assigned the claim File No. xxxxxx537. Appellant submitted an October 2, 2002 report from Dr. Wainwright diagnosing hammertoes in both feet. He also submitted July 29, 2005 and November 23, 2007 notes of surgical arthroplasties of the joints in the right second, third, fourth and fifth toes. Appellant contracted postoperative osteomyelitis of the second toe, necessitating amputation at the interphalangeal joint.

In a December 22, 2011 letter, OWCP advised appellant of the evidence needed to establish his claim. It requested a report from his attending physician explaining how and why walking and standing at work would cause the claimed hammertoe deformities.

By decision dated January 31, 2012, under File No. xxxxxx537, OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish causal relationship.

Appellant requested a hearing, held on May 15, 2013. He submitted April 4 and 10, 2012 letters asserting that Dr. Wainwright's reports were sufficient to establish causal relationship. Appellant also provided an October 13, 2005 report from Dr. Howard Masuoka, an attending Board-certified gastroenterologist, who attributed appellant's hammertoe deformities to degenerative joint disease in both feet with possible soft tissue injuries. A May 16, 2011 report from Dr. Wainwright opined that, because walking and standing at work caused pain, they also contributed to the development of hammertoes. In a December 16, 2011 report, Dr. Wainwright stated that appellant's hammertoes could be caused by a muscle imbalance possibly due to lumbar radiculopathy as observed on a January 5, 2011 magnetic resonance imaging (MRI) scan.[4]

By decision dated June 26, 2012, under File No. xxxxxx474, an OWCP hearing representative affirmed the November 1, 2011 decision. She found that the evidence submitted did not provide sufficient medical rationale to establish that walking or standing at work caused or aggravated a foot condition. In an August 25, 2012 letter, appellant requested reconsideration.[5]

By decision dated and finalized August 1, 2012, under File No. xxxxxx537, an OWCP hearing representative affirmed the January 31, 2012 decision on the grounds that the evidence was insufficient to establish causal relationship. In an August 30, 2012 letter,[6] appellant requested reconsideration. By decision dated November 5, 2012, OWCP denied modification on

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[4] A January 5, 2011 lumbar MRI scan showed mild to moderate multilevel degenerative disc disease.

[5] Appellant submitted an August 15, 2012 letter from Dr. David J. Aarons, an attending internist, relating appellant's complaints of bilateral foot pain, and sensorimotor polyneuropathy in both feet demonstrated by a December 6, 2010 electromyogram (EMG). Dr. Aarons did not address the claimed causal relationship to work factors.

[6] On its face, the letter was dated May 30, 2012. However, the letter contains several specific references to OWCP's August 1, 2012 decision and was received by OWCP on September 5, 2012.

the grounds that the medical evidence under File Nos. xxxxxx537 and xxxxxx474 did not establish that work factors caused or aggravated the claimed hammertoe deformities.

Appellant appealed to the Board. In an April 12, 2013 order remanding case, the Board set aside the August 1 and November 5, 2012 decisions. The case was returned for doubling of the two right foot claims.[7] OWCP doubled File No. xxxxxx537 with File No. xxxxxx474.[8] Appellant submitted a January 22, 2010 report from Dr. Wainwright stating that he advised appellant to "refrain from those activities that aggravate his foot deformities and cause pain" such as walking, standing and carrying more than 25 pounds.

By decision dated July 19, 2013, OWCP denied modification on the grounds that the medical evidence did not establish causal relationship. It found that none of the medical reports submitted under either claim contained sufficient rationale explaining how or why walking and standing at work caused or contributed to the claimed hammertoe 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[9] 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.[10]

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.[11] 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; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that 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. The medical evidence required to establish causal relationship is generally 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

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[7] Docket No. 13-314 (issued April 12, 2013).

[8] On April 30, 2013 appellant filed a duplicate claim for occupational disease, assigned File No. xxxxxx407. OWCP deleted the claim on June 27, 2013 as a duplicate of File No. xxxxxx537.

[9] *Joe D. Cameron*, 41 ECAB 153 (1989).

[10] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[11] 20 C.F.R. § 10.5(q).

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 of the claimant, must be one of reasonable medial 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.[12]

An award of compensation may not be based on appellant's belief of causal relationship.[13] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[14] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the FECA.[15]

ANALYSIS

It is not disputed that appellant's job entails walking and standing. He was diagnosed with several right foot conditions. The Board finds that appellant has not established that walking and standing at work caused or contributed to his hammertoe condition or need for surgery.

Appellant claimed that he sustained hammertoe deformities of the right foot due to prolonged walking and standing at work. He submitted reports dated October 2, 2002 to December 16, 2011 from Dr. Wainwright, an attending podiatrist, who performed hammertoe corrections in 2005 and 2007, resulting in the partial amputation of the right second toe. In January 22, 2010 and November 8, 2010 reports, Dr. Wainwright stated generally that walking and standing at work caused bilateral foot pain. He opined on May 16, 2012 that because walking and standing caused foot pain, the activities contributed to the development of hammertoes. The Board finds that Dr. Wainwright's opinion is of limited probative value as he did not sufficiently explain how walking and standing at work caused or aggravated the diagnosed hammertoe condition. Dr. Wainwright advised on October 6, 2011 that he could not "say for certain if the excessive walking and standing contributed to the actual neuropathy" but did cause pain and discomfort. In a December 16, 2011 report, he added that hammertoes could possibly be caused by a muscle imbalance possibly related to lumbar radiculopathy. The speculative nature of Dr. Wainwright's opinion on causal relationship diminishes its probative value.[16]

Appellant also provided the October 13, 2005 opinion of Dr. Masuoka, an attending Board-certified gastroenterologist, who opined that appellant's hammertoe deformities were due

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[12] *Solomon Polen*, 51 ECAB 341 (2000).

[13] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[14] *Id*.

[15] 20 C.F.R. § 10.303(a).

[16] *Frank Luis Rembisz*, 52 ECAB 147 (2000).

to degenerative joint disease in both feet. However, he did not provide adequate medical rationale explaining how or why walking and standing at work caused or aggravated the claimed condition. Dr. Masuoka's report is insufficiently rationalized to meet appellant's burden of proof in establishing causal relationship.[17]

Furthermore, on August 23, 2011 Dr. Fowler, an OWCP referral physician, reviewed the record for claim number xxxxxx474. He found no basis on which to attribute appellant's hammertoe deformities to walking or standing at work.

On appeal, appellant contends that OWCP did not properly develop the medical evidence and that Dr. Fowler did not perform a thorough examination. The Board notes, however, that OWCP considered both medical records. There is no evidence that Dr. Fowler's examination was deficient in any way. Appellant also asserted that he meant to file a claim for back and leg injuries, not a claim for hammertoe deformities. The evidence of record, however, clearly reflects his claim of right foot conditions.

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 has not established that he sustained a right foot condition in the performance of duty.

[17] *See Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 19, 2013 is affirmed.

Issued: January 10, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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