



on May 20, 2009. The tow motor accident injured my neck, back, right elbow, right hip, and ran over my right foot. Since that date my duties as a labor custodian exacerbated and worsened my foot in the course of my custodial duties.” Appellant indicated that on March 28, 2013 he first became aware of his claimed injury and that it was caused or aggravated by his employment. He stopped work on July 9, 2012 and has not worked since that time.<sup>2</sup>

Under a separate claim, file number xxxxxx735, not presently before the Board, appellant previously filed a traumatic injury claim (Form CA-1) on May 20, 2009 alleging that he sustained an injury at work on that date. Regarding the cause of the claimed injury, he stated, “I was standing on floor, talking to [illegible] over by [illegible] when I was hit by tow motor....” Regarding the nature of the injury, appellant noted, “I was hit in right arm and right leg from elbow down. Machine knocked me back about 3-5 feet.” Appellant stopped worked on May 20, 2009 but began working in a light-duty job for the employing establishment on May 26, 2009. OWCP initially accepted his traumatic injury claim for sprains of his neck and lumbar region. It later expanded the accepted conditions to include enthesopathy of the right hip.

Appellant submitted a number of medical records from 2009 in which attending physicians discussed the treatment for the effects of his May 20, 2009 work injury. A number of the reports contained the diagnoses of “sprain of neck” and “sprain lumbosacral.”

In an August 20, 2013 statement, Patrick Picciotti, manager of maintenance operations, indicated that the employing establishment was challenging appellant’s August 19, 2013 occupational disease claim. He indicated that appellant was asserting in his August 19, 2013 claim that a tow motor ran over his right foot on May 20, 2009, but noted that appellant made no such claim at the time he filed a traumatic injury claim on May 20, 2009.

In a September 26, 2013 letter, OWCP requested that appellant submit additional factual and medical evidence in support of his claim, including medical evidence evaluating his condition around the time he became aware of the present claimed condition in March 2013. In another September 26, 2013 letter, it requested that the employing establishment provide additional evidence, including a description of appellant’s work duties.

In a statement received on October 2, 2013, Mr. Picciotti indicated that, prior to stopping work on July 9, 2012, the majority of appellant’s duties involved janitorial work such as mopping floors and cleaning toilets. He indicated that appellant had to lift up to 45 pounds a few times a day and had to push and pull objects for short intervals. Appellant had to bend and stoop approximately 15 minutes a day. He was allowed multiple 10-minute breaks throughout the workday and a 30-minute lunch; he was told that could have extra time to sit down if he first notified his supervisor. Mr. Picciotti attached a copy of appellant’s job description.

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<sup>2</sup> Appellant also claimed that he sustained a traumatic right foot injury on July 9, 2012 due to walking at work on that date, but OWCP denied his claim as he had not submitted sufficient medical evidence in support of his claim. By decision dated December 23, 2013 (Docket No. 13-1745), the Board affirmed OWCP’s denial of appellant’s claim for this injury. This other claim is not presently before the Board. Appellant was separated from the employing establishment effective December 13, 2013.

Appellant submitted statements which were received on October 7 and 16, 2013. He stated that his job required him to engage in a “great deal of walking” while performing his work duties. Appellant indicated that his work building was 300,000 square feet large and that he had to regularly monitor this area, as well as areas outside the building. He estimated that he was required to walk for five to seven hours during each workday. Appellant discussed his belief that he sustained injury to his right foot at work on May 20, 2009 and July 9, 2012.

In a supplemental statement received on November 5, 2013, Mr. Picciotti stated that appellant mischaracterized his work duties when he indicated that he had to walk throughout the entire worksite. He noted that appellant was assigned a specific route that only required him to walk through a portion of the worksite. Mr. Picciotti also indicated that appellant did not initially report that his right foot was struck on May 20, 2009.<sup>3</sup>

In a May 27, 2011 report, Dr. Mark L. Bauman, an attending podiatrist, stated that on January 7, 2010 appellant presented to his office with a chief complaint of pain in the right third web space which he diagnosed as a suspicion of a Morton’s Neuroma of the right third web space. He indicated that appellant had initially incurred injury at work on May 20, 2009 when a tow motor hit his right foot and hip. Dr. Bauman noted that appellant could only “perform his activities” on an intermittent basis due to relatively constant pain and stated:

“The incident that occurred in May 2009 in 100 percent certainty precipitated these chains of events which led to the initial pain in the right foot which created a likely permanent, but definite[ly] temporary aggravation to symptoms of the left foot as well as additional symptoms of the right foot, those being plantar fasciitis with a compensatory gait.”

In a November 14, 2012 report, Dr. Bauman discussed a right foot injury that appellant claimed had occurred due to walking during a single work shift on July 9, 2012. He noted that, on July 9, 2012, appellant felt discomfort “under his toes [and] on top of the right foot under the ankle.” Dr. Bauman stated:

“I feel absolute certainty that the injury and symptomatology that [appellant] had on July 9, 2012 was completely related to the injury that occurred in May 2009 which he has been working valiantly for over three years. The type of injury that he had certainly can, and in his case was, exacerbated by the walking he had to do on the work surfaces that he had to ambulate.”

In a November 13, 2013 decision, OWCP denied appellant’s claim for failing to submit sufficient medical evidence that he sustained an occupational disease of his right foot. It noted that the record did not contain a rationalized medical report showing that he sustained an occupational disease of his right foot due to performing specific work duties over time.

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<sup>3</sup> Mr. Picciotti attached an accident report completed by another employing establishment official on May 20, 2009 which indicates that on that date appellant reported being struck by a tow motor on his right arm and right leg from the elbow down.

In a November 19, 2013 report addressed to counsel, Dr. Howard Abramsohn, an attending podiatrist, stated that, per counsel's request concerning a causal nature for appellant's "chronic injury of his right foot which has prevented him from returning to work," it was his opinion that his initial injury on May 20, 2009 was the cause without any uncertainty as to his deformity and subsequent right foot pain which prevented him from continuing to work in a normal fashion. He stated:

"It is with reasonable medical certainty that the right foot condition was aggravated by the custodial duties that he must perform at his job. This is based upon my review of all of Dr. Bauman's examination and subsequent visits. As a result of his injuries, I feel that any sort of standing[-]up job or weight-bearing job he may be offered would prove more disastrous to this man. Work, if possible, should be in a sitting position."

In an April 16, 2014 letter to counsel, Dr. Abramsohn indicated that, after reviewing his November 19, 2013 letter, he had noted that appellant's pain was directly related to his injury on May 20, 2009. He stated, "The patient sustained a nerve injury or entrapment of the third intermetatarsal space of the right foot. The diagnosis is a Morton's Neuroma."

Appellant requested a hearing with an OWCP hearing representative. During the hearing held on April 28, 2014, he testified that he first began working for the employing establishment in December 1993. Appellant discussed the work duties which he believed caused his right foot condition and described the medical care he received for his right foot. He estimated that, in order to perform his work duties, he had to walk for five to seven hours out of his eight-hour workday. Appellant also discussed the prior injury he sustained at work on May 20, 2009.

In a July 15, 2014 decision, OWCP's hearing representative affirmed its November 13, 2013 decision denying appellant's claim for an occupational disease of his right foot. She indicated that the letters of Dr. Abramsohn did not contain adequate medical rationale in support of their opinions on causal relationship.

### **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 of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

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<sup>4</sup> *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> See *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5(ee), (q); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

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) a 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.

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable 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 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.<sup>6</sup> It is well established that the possibility of future injury constitutes no basis for the payment of compensation.<sup>7</sup>

### ANALYSIS

On August 19, 2013 appellant filed an occupational disease claim alleging injury to his right foot. He last worked for the employing establishment on July 9, 2012 and indicated in his claim that on March 28, 2013 he first became aware of his claimed injury and that it was caused or aggravated by his employment. Regarding the cause of the claimed injury, appellant mentioned a May 20, 2009 traumatic work injury and stated, "Since that date my duties as a labor custodian [have] exacerbated and worsened my foot in the course of my custodial duties." He provided further discussion of his belief that the performance of his work duties over time caused injury to his right foot. Appellant indicated that he had to walk five to seven hours each workday.

The Board finds that appellant failed to submit sufficient medical evidence to establish an occupational injury to his right foot.

In May 27, 2011 and November 14, 2012 reports, Dr. Bauman, an attending podiatrist, discussed appellant's foot condition and essentially attributed his foot problems to two traumatic injuries on May 20, 2009 and July 9, 2012. Appellant claimed that he sustained injury on May 20, 2009 when the right side of his body was struck by a tow motor and OWCP had accepted neck and lumbar sprains and enthesopathy of the right hip. The claim was not accepted for any foot injury. Appellant had claimed that he sustained a traumatic right foot injury on July 9, 2012 due to walking at work on that date, but OWCP denied his claim because the medical evidence was insufficient to establish his claim.

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<sup>6</sup> See *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

<sup>7</sup> *Gaeten F. Valenza*, 39 ECAB 1349, 1356 (1988).

By decision dated December 23, 2013, the Board affirmed OWCP's denial of appellant's claim for the July 9, 2012 injury. The Board notes that these two work injuries, which were developed under separate claim files, are not the subject of the present claim. Therefore, Dr. Bauman's discussion of the circumstances surrounding the claims for May 20, 2009 and July 9, 2012 injuries is not relevant. The present claim involves appellant's assertion that he sustained a right foot injury due to performing his work duties over time before stopping work on July 9, 2012. In his November 14, 2012 report, Dr. Bauman stated, "The type of injury that he had certainly can, and in his case was, exacerbated by the walking he had to do on the work surfaces that he had to ambulate." However, this vague and general statement on causal relationship would not establish appellant's claim for an occupational disease of his right foot. Dr. Bauman's opinion is of limited probative value because he did not provide a rationalized opinion on causal relationship.<sup>8</sup> He did not describe appellant's work duties in any detail and he did not explain how the performance of his specific work duties over time could have caused a right foot injury.

Appellant also submitted November 19, 2013 and April 16, 2014 reports of Dr. Abramsohn, an attending podiatrist. The Board finds that these reports are of limited probative value on the relevant issue of this case. Dr. Abramsohn also attributed appellant's foot problems to the May 20, 2009 work incident, a matter that is not currently before the Board. He also stated, "It is with reasonable medical certainty that the right foot condition was aggravated by the custodial duties that he must perform at his job." However, this statement lacks medical rationale necessary to establish that appellant sustained an occupational foot disease. Dr. Abramsohn failed to provide any description of appellant's work duties or explain how the performance of such duties over time before July 9, 2012 caused injury. He stated that any sort of standing-up job or weight-bearing job that might be offered to appellant "would prove more disastrous to this man" and recommended that he work in a sitting position. However, the Board has held that the possibility of future injury constitutes no basis for the payment of compensation.<sup>9</sup>

On appeal, counsel argued that the file for appellant's May 20, 2009 traumatic injury claim should be combined with the file for the present occupational disease claim concerning his right foot. However, the May 20, 2009 claim was accepted for neck and lumbar region sprains and enthesopathy of the right hip and has not been accepted for any foot injury. In the present claim, appellant alleges that he sustained a right foot injury due to new work factors in the form of performing his job duties over time. As noted above, the claim relating to the May 20, 2009 injury is not relevant to the present claim. Counsel has not articulated the need to combine the present file with a file for an unrelated past work injury.

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.

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<sup>8</sup> See *supra* note 6.

<sup>9</sup> See *supra* note 7.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained an occupational disease of his right foot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 15, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 2015  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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