

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

B.D., Appellant)
and) Docket No. 15-1627
U.S. POSTAL SERVICE, POST OFFICE,) Issued: April 26, 2016
Ellsworth, ME, Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 27, 2015 appellant filed a timely appeal from a February 19, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 has met her burden of proof to establish bilateral foot and ankle conditions due to factors of her federal employment on or before October 6, 2013.

FACTUAL HISTORY

On November 25, 2013 appellant, then a 61-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging bilateral ankle and foot conditions in the performance of duty. She attributed her conditions to walking on uneven ground while

¹ 5 U.S.C. § 8101 *et seq.*

delivering packages, walking across the workroom floor, entering and exiting her delivery vehicle, and the effects of a January 16, 2004 traumatic foot injury under File No. xxxxxx520. Appellant stopped work on November 22, 2013.

Appellant was seen by Dr. Richard Hines, an attending Board-certified family practitioner. On November 22, 2013 Dr. Hines diagnosed right foot pain “possibly related to work.” He prescribed an immobilizer boot and physical therapy. In a December 12, 2013 report, Dr. Hines diagnosed right plantar fasciitis with no history of preexisting injury or impairment. He checked a box marked “no” indicating that appellant had “no apparent injury” related to her employment. Dr. Hines limited appellant to sedentary duty.

In a February 10, 2014 letter, OWCP advised appellant of the additional evidence needed to establish her claim, including a detailed description of the work factors alleged to have caused or contributed to the claimed conditions, and a narrative report from her attending physician explaining how and why those duties would cause plantar fasciitis or any other condition. It afforded appellant 30 days to submit such evidence.

In response, appellant submitted her February 20, 2014 statement, attributing the claimed foot and ankle conditions to walking on uneven ground, entering and exiting her delivery vehicle 10 to 15 times a day, engine vibrations, and “bouncing around” in her delivery vehicle. She explained that she experienced increased symptoms while at work. Appellant participated in physical therapy while off work from November 22, 2013 to January 26, 2014, which reduced her symptoms. Her lower extremity lameness returned after she resumed work on January 27, 2014.

Appellant’s supervisor provided a February 19, 2014 statement acknowledging that he did “see how getting in and out of a postal vehicle would cause injury to her good ankle,” and that appellant did walk on uneven ground in the performance of duty. The supervisor contended, however, that appellant did not file an accident report or “pinpoint when this happened.”

By decision dated March 11, 2014, OWCP denied the claim, finding that causal relationship had not been established. It accepted that the identified work factors occurred as alleged. However, the medical evidence did not explain how and why those factors would cause a foot or ankle condition.

On April 2, 2014 appellant requested a review of the written record by an OWCP hearing representative. She submitted additional medical evidence in support of her claim.

In a November 22, 2013 report, Dr. Hines related appellant’s account of the onset of right foot pain two weeks before with no apparent injury. November 22, 2013 x-rays of the right ankle showed mild osteoarthritis, arthritic changes in multiple joints in the midfoot and hind foot since a June 11, 2010 study, and a small inferior calcaneal spur unchanged since the June 11, 2010 study. Dr. Hines diagnosed right foot and ankle pain with a markedly antalgic gait. He pared a medial foot callous and prescribed a walking boot. Dr. Hines diagnosed right plantar fasciitis on December 12, 2013. Appellant’s symptoms persisted through December 2013. Dr. Hines released appellant to part-time work on January 9, 2014.

Dr. Gregory Pomeroy, an attending Board-certified orthopedic surgeon, provided a January 23, 2014 report noting a midfoot loss of medial longitudinal arch when standing, full range of motion of the right foot and ankle, and a normal gait. He diagnosed right plantar fasciitis and an acquired equinus deformity of the right foot. Dr. Pomeroy released appellant to full duty as of January 27, 2014.

In a January 26, 2014 report,² Dr. Hines explained that appellant's right foot and ankle pain were caused by plantar fasciitis, with osteoarthritis as a secondary cause. He opined that the medical evidence substantiated that appellant's duties aggravated her conditions but did not cause them.

By decision dated November 4, 2014, an OWCP hearing representative set aside the March 11, 2014 decision and remanded the case to refer appellant, the medical record, and a statement of accepted facts (SOAF) to a second opinion physician. The SOAF noted that appellant's duties required prolonged walking over uneven ground and lifting and carrying up to 70 pounds. OWCP requested that the specialist provide a detailed, well-reasoned opinion regarding whether the accepted factors caused or aggravated the claimed conditions.

On January 21, 2015 OWCP obtained a second opinion from Dr. Philip R. Kimball, a Board-certified orthopedic surgeon. Dr. Kimball reviewed the medical record and statement of accepted facts. He noted a history of a 2004 occupational left ankle sprain and left knee dislocation. Appellant asserted that she had not "walked right" since that injury. Dr. Kimball also summarized appellant's treatment from November 2013 to January 2014, and noted the recent onset of bilateral lower extremity edema. On examination he observed bilateral *pes planus*, a right forefoot varus deformity, bunion formation, and a hammer toe of the right second toe. Dr. Kimball diagnosed advanced degenerative arthritis of the midfoot bilaterally, resolved right foot and ankle pain, bilateral flat foot deformity, a right forefoot varus deformity, and bilateral varus deformity of the knees. He opined that appellant did not have plantar fasciitis. Dr. Kimball opined that, based on the medical record and objective clinical findings, appellant's duties as a letter carrier did not cause or aggravate any of the diagnosed conditions.

By decision dated February 19, 2015, OWCP denied appellant's claim finding that causal relationship was not established based on Dr. Kimball's opinion as the weight of the medical evidence.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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

² Dr. Hines provided a copy of the report to OWCP on April 2, 2014.

the employment injury.³ 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.⁴

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.⁵ 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 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.⁶

ANALYSIS

Appellant claimed that she sustained bilateral foot and ankle conditions due to prolonged walking and use of a delivery vehicle. In support of her claim, appellant submitted reports from Dr. Hines, an attending Board-certified family practitioner. Dr. Hines diagnosed right plantar fasciitis and degenerative arthritis of the right midfoot. He opined that, although there was no distinct traumatic incident, objective findings supported that the accepted work factors, including prolonged walking over uneven ground, aggravated the diagnosed conditions. Dr. Pomeroy, an attending Board-certified orthopedic surgeon, confirmed the presence of plantar fasciitis, *pes planus*, and an acquired equinus deformity.

OWCP obtained a second opinion from Dr. Kimball, a Board-certified orthopedic surgeon, who observed *pes planus*, degenerative arthritis, and an equinus deformity of the right foot. Dr. Kimball opined, however, that appellant did not have plantar fasciitis. He further opined that her work duties did not cause or aggravate her conditions. Dr. Kimball indicated that there were no objective findings to support that appellant's work duties caused or aggravated the

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ 20 C.F.R. § 10.5(q).

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

diagnosed conditions. OWCP denied the claim by decision dated February 19, 2015, according Dr. Kimball the weight of the medical evidence.

The Board finds that Dr. Kimball provided extensive rationale, fortified by objective findings, explaining that work factors did not cause or aggravate the diagnosed bilateral ankle and foot problems. Also, his opinion was based on the complete medical record and a SOAF. As such, his opinion constitutes the weight of the medical evidence.

In contrast, the opinions of Dr. Hines and Dr. Pomeroy are insufficient to meet appellant's burden of proof, as neither physician provided medical rationale supporting causal relationship. Neither physician explained the pathophysiologic effects of appellant's work activities on her feet or ankles. In the absence of such rationale, their opinions are insufficient to meet appellant's burden of proof.⁷

Appellant has not presented any rationalized medical evidence, based on a complete medical record, establishing a causal relationship between her bilateral foot conditions and factors of her federal employment. Thus, she has not met her burden of proof. On appeal appellant asserts that Dr. Kimball's opinion could not represent the weight of the medical evidence as he did not examine her until she had returned to work for one year. She contends that work factors caused her bilateral foot conditions. As found, however, appellant's physicians did not explain how or why work factors would cause or aggravate the claimed 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 met her burden of proof to establish bilateral foot and ankle conditions due to factors of her federal employment on or before October 6, 2013.

⁷ Deborah L. Beatty, 54 ECAB 340 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 19, 2015 is affirmed.

Issued: April 26, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board