United States Department of Labor
Employees' Compensation Appeals Board

A.F., Appellant	)	
and	)	**Docket No. 16-1342**
	)	**Issued: December 5, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Melville, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 14, 2016 appellant, through counsel, filed a timely appeal from a May 24, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 an occupational disease causally related to factors of his federal employment.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 17, 2016 appellant, then a 54-year-old postal supervisor, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral flatfoot deformity, tibial tendon insufficiency, midfoot collapse, *pes planus*, great toe metatarsophalangeal changes, and left foot arthrodesis as a result of many years of walking on uneven ground at work. He stopped work on February 18, 2015.

In an attached statement, appellant described the various positions he held at the employing establishment. He explained that from 1994 to 2000 he worked as a letter carrier; from 2000 to 2001 he worked as a mechanic; from 2001 to 2006 he worked as a vehicle operation maintenance assistant; and from 2006 to 2015 he worked as a postal supervisor. Appellant related that each assignment resulted in bilateral pressure on his feet, progressively worsening bilateral flatfoot deformity, and other related conditions due to walking on uneven ground and standing for excessive periods of time. He reported that he had never had any similar conditions and alleged that his conditions progressed and worsened over the course of his employment and were directly related to his occupation. Appellant noted that he was attaching narrative medical evidence describing the relationship between his conditions and his employment duties.

Appellant was examined by Dr. Steven Sampson, a Board-certified orthopedic surgeon, who indicated in a January 29, 2016 narrative report that appellant worked as an employing establishment supervisor and had a long history of flatfoot that progressively worsened over time. Dr. Sampson noted that appellant denied any specific injury but emphasized that appellant spent long hours walking on uneven ground throughout his more than 20 years of working as a mail carrier. He related that upon initial examination on April 23, 2012 he observed evidence of left greater than right midfoot collapse with marked soft tissue swelling and tenderness over the course of the posterior tibial tendon bilaterally. Dr. Sampson also reported that appellant had marked bilateral Achilles tendon tightness with a normal neurovascular examination. He related that x-ray evaluation of both ankles and feet showed evidence of bilateral *pes planus*, left more than right, with degenerative changes of bilateral great toe metatarsophalangeal joints and findings consistent with bilateral tibiotalar arthritis. Dr. Sampson described the physical examination he conducted and related appellant's continued complaints of worsening foot pain. He noted that on June 1, 2015 appellant began to complain of severe pain in his right foot. Dr. Sampson related that appellant believed the worsening pain was due to excessive weight bearing required on the right while trying to guard against injuring his left foot.

Dr. Sampson indicated that it was his opinion that appellant's "bilateral acquired flatfoot deformity was a result of the many years and miles of walking on an uneven ground that resulted in the worsening of his bilateral flatfoot deformity." He noted that appellant's ultimate prognosis for return to work in his former position was guarded and unlikely because of appellant's job requirement of having to stand and walk long distances on even and uneven ground. Dr. Sampson noted that such walking could be unsafe, could result in giving way episodes and instability of his ankle, and could result in serious falls or fractures in the future.

By letter dated March 22, 2016, OWCP advised appellant that the evidence submitted was insufficient to establish his occupational disease claim. It requested that he respond to a

questionnaire and provide medical evidence which established that he sustained a diagnosed condition as a result of his employment duties. Appellant was afforded 30 days to submit the requested evidence.

By letter dated April 5, 2016, counsel related that he received OWCP's March 22, 2016 development letter. He noted that he was enclosing appellant's response to the questionnaire and would be providing supplemental medical evidence.

In the completed questionnaire form, appellant described the employment factors which he believed caused his condition as bilateral pressure on his feet as a result of many years and miles of walking on uneven surfaces, exacerbated by standing for excessive long periods of time. He further explained that as a letter carrier he also carried, sorted, and delivered sacks of mail and that as a mechanic and vehicle maintenance assistant he also drove excessively. Appellant related that as an employing establishment supervisor he walked up to six miles per day. He asserted that many years of performing these duties every day resulted in his foot conditions of bilateral flatfoot deformity, bilateral tibial tendon insufficiency, bilateral midfoot collapse, bilateral *pes planus,* bilateral great toe metatarsophalangeal changes, left foot arthrodesis, and all conditions identified as work related in the previously provided narrative medical report by Dr. Sampson. He noted that Dr. Sampson's medical report also contained a history of his symptoms, diagnoses of his conditions, and history of medical treatment.

In a decision dated May 24, 2016, OWCP denied appellant's occupational disease claim. It accepted appellant's alleged duties as an employing establishment supervisor and that he sustained diagnosed medical conditions, but denied his claim finding that the medical evidence of record failed to establish that his diagnosed conditions were causally related to his federal employment duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[3] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[4] In an occupational disease claim, appellant's burden requires submission of the following: (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.[5]

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan,* 20 ECAB 55, 58 (1968).

[4] *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton,* 40 ECAB 1143, 1145 (1989).

[5] *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre,* 51 ECAB 623 (2000).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[6] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[7]

ANALYSIS

Appellant alleged various bilateral foot conditions as a result of walking on uneven surfaces and prolonged standing as part of his employment duties. OWCP accepted the factors of his employment and that he was diagnosed with bilateral foot conditions but denied his claim because the medical evidence of record failed to establish that his conditions were causally related to his employment duties. The Board finds that appellant has not met his burden of proof to establish that his diagnosed conditions resulted from factors of his federal employment.

The only medical evidence is a January 29, 2016 narrative report from Dr. Sampson who accurately described that appellant worked for the employing establishment for more than 20 years and spent long hours walking on uneven ground. Dr. Sampson noted that appellant also had a history of flatfoot condition that progressively worsened over time. He provided findings on examination and related that x-ray evaluation of both ankles and feet showed evidence of bilateral pes planus, left more than right, with degenerative changes of bilateral great toe metatarsophalangeal joints and findings consistent with bilateral tibiotalar arthritis. Dr. Sampson opined that appellant's "bilateral acquired flatfoot deformity was a result of the many years and miles of walking on an uneven ground that resulted in the worsening of his bilateral flatfoot deformity."

Although Dr. Sampson's report contained an accurate description of appellant's employment duties and an affirmative statement of causation, it did not contain a sufficient explanation, based on medical rationale, of how any of appellant's duties would have physiologically caused or contributed to these various medical conditions.[8] He based his opinion on appellant's belief that his worsening pain was due to excessive weight bearing required on the right while trying to guard against injuring his left foot. Dr. Sampson failed to explain how the specific duties of walking on uneven ground and prolonged standing caused or contributed to his bilateral foot condition. A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[9] As the record did not contain sufficient medical evidence explaining how appellant's employment duties caused or contributed to his current bilateral foot conditions, appellant has failed to establish his occupational disease claim.

[6] *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[8] *See M.M.*, Docket No. 15-607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

[9] *T.M.*, Docket No. 08-975 (issued February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

On appeal, counsel alleges that the medical evidence from appellant's attending physician and the correspondence and arguments previously submitted supported appellant's claim of work-related disability causally related to many years and miles of walking on uneven surfaces, and exacerbated by standing for excessive long periods of time. As previously noted, however, Dr. Sampson's report lacked sufficient medical rationale to support a causal relationship and did not establish appellant's claim.

Causal relationship is a medical question that must be established by probative medical opinion from a physician.[10] The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.[11] As appellant failed to submit such rationalized medical evidence, he failed to meet his burden of proof to establish his claim.

Appellant may submit new evidence or argument as part of a formal 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. §§ 10.606 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an occupational disease causally related to factors of his federal employment.

[10] *W.W.*, Docket No. 09-1619 (issued June 2010); *David Apgar*, 57 ECAB 137 (2005).

[11] *Patricia J. Bolleter*, 40 ECAB 373 (1988).

ORDER

IT IS HEREBY ORDERED THAT the May 24, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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