

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

D.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Edison, NJ, Employer**

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**Docket No. 16-1358
Issued: December 19, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 22, 2016 appellant filed a timely appeal from a March 22, 2016 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 met her burden of proof to establish that she developed bilateral foot conditions causally related to factors of her federal employment.

FACTUAL HISTORY

On April 17, 2015 appellant, then a 35-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed tenosynovitis and bone bruises as a result of her federal employment duties. She reported excruciating pain in her feet while walking/standing

¹ 5 U.S.C. § 8101 *et seq.*

regularly for long periods of time. Appellant first became aware of her condition in August 2008 and of its relationship to her federal employment on February 19, 2015. She stopped work on February 26, 2015 and did not return.

In an August 21, 2008 diagnostic report, Dr. Cheryl Jean Byk, a Board-certified radiologist, reported that an x-ray of the left foot revealed hammertoe deformity third digit and seven millimeter (mm) plantar calcaneal spur. An x-ray of the right foot revealed hallux valgus with soft tissue swelling overlying the first metatarsophalangeal joint space; hammertoe deformities of the third and fourth digits; degenerative changes of the mid foot; and small plantar calcaneal spur.

Prescription and handwritten notes dated September 9, 2008 through March 16, 2015 document treatment of appellant's feet with Dr. Patricia Williams Bennett, a podiatrist.² Dr. Bennett noted diagnoses of osteoarthritis of the foot, bone bruise, cyst, and tenosynovitis. In a February 19, 2015 prescription note, she restricted appellant from constant walking for four to six weeks due to significant podiatric abnormalities which were exacerbated by walking.

In a May 6, 2013 diagnostic report, Dr. Stephen Toder, a Board-certified radiologist, reported that an x-ray of the right foot revealed degenerative changes with hallux valgus deformity and pes planus deformities; prominent plantar calcaneal spur; and no fracture or dislocation.

In a May 15, 2013 diagnostic report, Dr. Byk reported that an arterial doppler examination of the lower extremities revealed triphasic waveforms in all the vessels interrogated except for the left posterior tibial artery and bilateral dorsalis pedis arteries.

In a January 8, 2015 diagnostic report, Dr. Kenneth Blatt, a Board-certified radiologist, reported that a magnetic resonance imaging (MRI) scan of the right foot revealed diffuse hammertoe deformities of the forefoot; subchondral bone bruise base third metatarsal and adjacent lateral cuneiform, which could represent bone bruises or be arthritic in nature; arthritic changes mid foot; and loculated fluid and/or loculated cystic structure extending from the sinus tarsi, which could contribute to sinus tarsi syndrome and injury to the underlying ligaments.

In a January 19, 2015 diagnostic report, Dr. Douglas Boxer, a Board-certified diagnostic radiologist, reported that an MRI scan of the left foot revealed abnormal with small ganglion cyst adjacent to the left second metatarsophalangeal joint; hammertoe deformities; and mild flexor hallucis longus tendinosis.

By letter dated June 11, 2015, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the factual and medical evidence needed and was afforded 30 days to respond.

In a June 23, 2015 narrative statement, appellant responded to OWCP's development letter stating that she had been a letter carrier since July 23, 2005 which entailed constant walking. During that time, she would have to carry a satchel weighing approximately 25 pounds

² The Board notes that many of the handwritten notes are illegible.

while walking. Appellant was required to ascend and descend steps, through grass, on uneven sidewalks, in snow, ice, rain, and sleet, for nearly 10 years, 8 to 12 hours per day, 6 days per week. She explained that repetitive walking and pounding on her feet over the duration of her mail career increased the ailments to her feet. Appellant noted no foot problems prior to July 23, 2005 and engaged in no activities which entailed long-term consistent walking. In support of her claim, she submitted an official position description for a letter carrier which outlined her employment duties.

By decision dated July 23, 2015, OWCP denied appellant's claim finding that the evidence of record failed to establish that her diagnosed conditions were causally related to her accepted federal employment duties.

On October 28, 2015 appellant requested reconsideration of OWCP's decision. She noted submission of two additional medical reports which would establish causal relationship between her injuries and factors of federal employment.

OWCP thereafter received a June 22, 2015 medical report in which Dr. Bennett reported that appellant had multiple diagnoses related to her claim which were included in her medical records. These diagnoses included subchondral edema and bone bruises of the right foot; tibiotalar effusion; tenosynovitis of the peroneal tendons; and loculated fluid in the sinus tarsi of the right foot. Dr. Bennett also noted presence of fluid in the tendon sheaths in the flexor hallucis longus tendons of the left foot. She reported that all of these conditions were exacerbated by walking and that appellant's condition had deteriorated significantly since she first treated her in 2008. Dr. Bennett reiterated that these conditions were exacerbated and developed in relation to the trauma of walking. She noted appellant's employment as a letter carrier which required taking hundreds of steps per day in order to execute her job. Simultaneously, appellant was required to carry 20 pounds of mail and carry small packages. Thus, Dr. Bennett opined that the thousands of constant steps appellant had to take for the last 10 years directly contributed to her diagnoses, further supported by the diagnostic reports and progress notes of record.

In a September 14, 2015 medical report, Dr. Zachary Hart, a Doctor of Podiatric Medicine, reported evaluating appellant on August 28 and September 14, 2015 for another opinion. He explained that appellant had a painful condition of arthritis with tenosynovitis of her feet and ankles, which would progress and become increasingly more painful with the repetitive trauma of walking and carrying extra weight (*i.e.*, mailbags, parcels, *etc.*). Dr. Hart noted that medical records, charts, and diagnostic reports from her previous podiatrist Dr. Bennett, showed an extensive workup of both feet dating back to 2008. He opined that appellant's medical condition was likely a direct result from years of walking and mail carrying. Dr. Hart concluded that continuing to carry mail would cause further degenerative changes to the arthritis and diseased tendons of her feet and ankles.

By decision dated March 22, 2016, OWCP denied modification of the July 23, 2015 decision, finding that the evidence of record failed to establish that her diagnosed conditions were causally related to her accepted federal employment duties.

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 or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. To establish that an injury was sustained in the performance of duty in a claim for occupational disease, 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.⁵

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁶ The opinion of the physician 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. This medical opinion must include an accurate history of the employee’s employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician’s opinion.⁷

ANALYSIS

OWCP accepted that appellant engaged in repetitive activities of constant walking in her employment duties as a letter carrier. It denied her claim, however, because the medical evidence submitted failed to establish a causal relationship between those activities and her bilateral foot conditions. The Board finds that the medical evidence of record is insufficient to establish that appellant developed bilateral foot conditions causally related to factors of her federal employment as a letter carrier.

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁶ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁷ *James Mack*, 43 ECAB 321 (1991).

Dr. Bennett's progress and prescription notes dated September 9, 2008 and continuing document treatment for appellant's bilateral foot conditions. Diagnostic reports dated August 21, 2008 to July 19, 2015 further document multiple ailments involving the left and right foot as reported in appellant's medical history. In a June 22, 2015 medical report, Dr. Bennett reported that appellant had multiple diagnoses including subchondral edema and bone bruises of the right foot; tibiotalar effusion; tenosynovitis of the peroneal tendons; and loculated fluid in the sinus tarsi of the right foot. She also noted the presence of fluid in the tendon sheaths in the flexor hallucis longus tendons of the left foot. Dr. Bennett reported that all of the conditions were exacerbated and developed in relation to the trauma of walking at work and that appellant's condition had deteriorated significantly since she first treated her in 2008.

The Board finds that the opinion of Dr. Bennett is not well rationalized. While Dr. Bennett opined that appellant's diagnoses were causally related to factors of her federal employment, she failed to provide a sufficient explanation as to the cause of appellant's injury. She was familiar with appellant's employment duties, noting that she was a letter carrier whose work required taking hundreds of steps per day while carrying heavy mail and packages for the last 10 years. However, Dr. Bennett's statement on causation failed to explain the mechanism of injury pertaining to this occupational disease claim, namely, how walking for 10 to 12 hours per day, while carrying up to 20 pounds, would cause or aggravate appellant's bilateral foot injuries.⁸ Without explaining how physiologically the movements involved in appellant's employment duties caused or contributed to her diagnosed conditions, Dr. Bennett's opinion on causal relationship is equivocal in nature and of limited probative value.⁹

The Board notes that while the record reflects that appellant was seeking treatment for her injury since 2008, it is unclear which ailment is a result of a preexisting condition and which was caused by an occupational injury. Dr. Bennett reported that appellant's conditions were both exacerbated and developed in relation to the trauma of walking from her employment duties. She did not specify which conditions were caused by appellant's employment duties and which preexisting conditions were aggravated by factors of her federal employment. Moreover, Dr. Bennett failed to discuss whether appellant's preexisting injury had progressed beyond what might be expected from the natural progression of that condition.¹⁰ It is unclear whether appellant's injury was caused or aggravated by her occupational employment duties, a result of a preexisting condition, or due to degenerative changes. A well-rationalized opinion is particularly warranted when there is a history of preexisting condition.¹¹ As such, Dr. Bennett's report lacks the specificity and detail needed to establish that appellant's injuries are a result of a work-related occupational exposure.¹²

⁸ *S.W.*, Docket 08-2538 (issued May 21, 2009).

⁹ *See L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

¹⁰ *R.E.*, Docket No. 14-868 (issued September 24, 2014).

¹¹ *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹² *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

The September 14, 2015 report from Dr. Hart is also insufficient to establish appellant's claim. Similar to the deficiencies in Dr. Bennett's report, Dr. Hart only generally opined that appellant's employment duties caused her medical condition. He failed to explain the mechanism of injury, namely how physiologically, the movements involved in appellant's employment duties caused or contributed to her diagnosed conditions.¹³ Thus, Dr. Hart's report is insufficient to meet appellant's burden of proof.¹⁴

The remaining medical evidence of record is also insufficient to establish appellant's claim. Appellant submitted detailed diagnostic reports dated August 21, 2008 through January 19, 2015 documenting her bilateral foot conditions. However, these reports only interpreted imaging studies and provided no opinion on the cause of appellant's injury.¹⁵ Without any mention of the repetitive employment duties, any findings made could not be related to her claim to establish causal relationship.¹⁶ Dr. Bennett's progress and prescription notes also document appellant's bilateral foot conditions and need for treatment beginning in 2008.¹⁷ However, as noted above, the physician failed to provide a fully rationalized opinion establishing causal relationship.

The Board notes that there is no requirement that the federal employment be the only cause of appellant's injury. An employee is not required to prove that occupational factors are the sole cause of her claimed condition. If work-related exposures caused, aggravated, or accelerated appellant's condition, she is entitled to compensation.¹⁸ However, an award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.¹⁹ Appellant's honest belief that her occupational employment duties caused her medical injury is not in question. But that belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship.

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between appellant's federal employment duties as a letter carrier and her diagnosed bilateral foot conditions. Thus, appellant has failed to meet her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

¹³ *Supra* note 10.

¹⁴ *Id.*

¹⁵ *D.H.*, Docket No. 11-1739 (issued April 18, 2012).

¹⁶ *S.Y.*, Docket No. 11-1816 (issued March 16, 2012).

¹⁷ The Board notes that many of the handwritten notes are illegible and thus, lack probative value. *See Sheila A. Johnson*, 46 ECAB 323, 327 (1994); *see Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁸ *See Beth P. Chaput*, 37 ECAB 158, 161 (1985); *S.S.*, Docket No. 08-2386 (issued June 5, 2008).

¹⁹ *D.D.*, 57 ECAB 734 (2006).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her bilateral foot conditions were causally related to factors of her federal employment as a letter carrier.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated March 22, 2016 is affirmed.

Issued: December 19, 2016
Washington, DC

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

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

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