United States Department of Labor
Employees' Compensation Appeals Board

V.N., Appellant	)	
and	)	**Docket No. 16-1427**
	)	**Issued: December 13, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Indianapolis, IN, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 June 27, 2016 appellant, through counsel, filed a timely appeal of a May 23, 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish an occupational disease claim due 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 6, 2015 appellant then a 49-year-old window clerk, filed an occupational disease claim (Form CA-2), alleging that he developed neuropathy and plantar fasciitis as a result of prolonged standing while in the performance of duty. He became aware of his condition on February 20, 2004 and realized it was causally related to his employment on January 7, 2015. Appellant stopped work on January 28, 2015.

Appellant underwent a preemployment medical examination and assessment performed by Dr. R.B. Patel, a general practitioner. His history was significant for second-degree frostbite of both feet and toes while he was in the army and a broken right ankle in 1980. Dr. Patel noted that appellant had residuals of frost bite in both feet with tingling and numbness. The x-rays of appellant's feet dated December 2, 1999 and another dated August 2, 2012 revealed no abnormalities. On January 24, 2015 appellant had x-rays which revealed no significant osseous abnormality in either foot.

Appellant submitted a certification of healthcare provider report from Dr. Carolyn Cole, a podiatrist, dated February 5, 2015, who had treated him for an Achilles injury and heel pain aggravated by prolonged standing and walking. Dr. Cole recommended physical therapy and advised that appellant was unable to walk or stand for prolonged periods of time. She indicated that appellant was totally disabled from January 28 to February 9, 2015.

Appellant was treated by Dr. Estelle Albright, a podiatrist, on February 20, 2015 for service-connected frostbite with residual neuropathic pain. He noted his work as a stamp and window clerk where he stood on his feet all day. Appellant reported progressive symptoms of tingling and dysesthesia in both feet. Dr. Albright noted findings of intact monofilament and vibratory sense, intact pedal pulses, abundant hair on toes, intact skin, and bilateral fifth hammertoes. She diagnosed progressive neuropathy of the feet to the legs and postural fatigue and myalgia. Dr. Albright recommended custom orthotics and an electromyogram (EMG).

By letter dated March 5, 2015, OWCP advised appellant of the type of evidence needed to establish his claim. It particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific work factors.

Appellant submitted an April 2, 2015 statement and indicated that his current job required prolonged standing on an improper floor which aggravated his service-connected disability. He noted that in January 1986 while in the military his unit was on a 30-mile road march and camped out overnight. Appellant reported that upon awakening his feet were numb and he was diagnosed with plantar fasciitis, tendinitis, and frostbite. He further advised that in 1988, while stationed in Germany, he experienced a second incident of frostbite to his feet and he was hospitalized for two weeks. Appellant was diagnosed with Achilles tendinitis, plantar fasciitis, calcaneal neuritis, foot pain, and residual cold injury. His job duties included standing on his feet for eight hours a day, usually in one place, with minimal walking or sitting. Appellant advised that management denied his requests for foot rest bars and mats.

Appellant provided a compensation and pension examination report dated July 26, 1997 prepared by an unidentified healthcare provider who noted appellant's history of second-degree

frostbite in 1988 while in the military with complaints of numbness and tingling in both feet up to the ankle level. Examination revealed diminished light touch and pinprick sensation in his toes and ankles of both feet. The healthcare provider opined that appellant's symptoms were secondary to trauma that occurred in 1988. Appellant submitted a Veterans Affairs (VA) benefits decision dated November 14, 1997 which granted him a 10 percent service-connected award for frostbite for both feet. Also provided was an August 5, 2004 electromyogram (EMG) which revealed mild-to-moderate diffuse lower extremity demyelinating neuropathy.

On April 13, 2015 OWCP received a February 4, 2015 report from Dr. Cole. Dr. Cole related treating appellant for increased burning and shooting foot and heel pain from diabetic neuropathy, plantar fascial fibromatosis, and a history of frostbite. Appellant reported prolonged standing at the employing establishment window which caused his feet to be very painful by the end of the day. He noted serving in the military and having forefoot frostbite bilaterally for which he was granted VA benefits. Appellant had pain on palpation of the Achilles and posterior superior calcaneus with minimal pain on palpation of the medial calcaneal tubercle and plantar fascia band. Achilles and patellar reflexes and sensation were intact. Dr. Cole diagnosed bilateral Achilles tendinitis, bilateral mild plantar fasciitis, bilateral calcaneal neuritis, bilateral foot pain, and residual cold event. She recommended physical therapy and a prosthetic consult. Dr. Cole noted that appellant was disabled from January 28 to February 9, 2015 and could return to work with restrictions of standing and walking intermittently for up to two hours a day.

In a decision dated May 29, 2015, OWCP denied the claim as the medical evidence did not establish that he sustained an injury or medical condition causally related to the accepted work factors.

On February 23, 2016 appellant requested reconsideration. He submitted a February 9, 2016 report from Dr. Brian Patterson, a podiatrist, who treated appellant for bilateral posterior and plantar heel pain. Dr. Patterson noted findings of pain with palpation of the bilateral posterior and plantar heels and limited dorsiflexion of the ankles bilaterally. He diagnosed equinus, Achilles tendinitis, plantar fasciitis, calcaneal neuritis and a history of residuals of a service-connected cold injury. Dr. Patterson noted custom orthotics were insufficient to relieve appellant's symptoms. He opined that standing and walking at appellant's job aggravated his medical condition due to mechanical irritation and that any standing and walking will aggravate his medical conditions.

In a decision dated May 23, 2016, OWCP denied modification of the decision dated May 29, 2016.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place, and in the

manner alleged. Appellant must also establish that such event, incident, or exposure caused an injury.[3]

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 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 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.[4]

ANALYSIS

It is undisputed that appellant's work duties as a window clerk included standing for prolonged periods of time during an eight-hour shift. It is also undisputed that appellant was diagnosed with bilateral Achilles tendinitis, bilateral plantar fasciitis, bilateral calcaneal neuritis, bilateral foot pain, and residual cold event. However, the Board finds that appellant has submitted insufficient medical evidence to establish that his diagnosed conditions are causally related to specific employment factors.

Appellant submitted a February 9, 2016 report from Dr. Patterson who treated him for posterior and plantar bilateral foot and heel pain. Dr. Patterson diagnosed equines, Achilles tendinitis, plantar fasciitis, calcaneal neuritis, and a history of residuals of a service-connected cold injury. He opined that standing and walking at appellant's job aggravated his medical condition due to mechanical irritation. Although Dr. Patterson supported causal relationship, he did not provide sufficient medical rationale explaining the basis of his conclusion opinion regarding the causal relationship between appellant's diagnosed conditions and his work duties.[5] Dr. Patterson did not explain how walking or standing would cause or aggravate the diagnosed conditions and why the Achilles and heel conditions were not solely caused by nonwork-related

[3] *See Walter D. Morehead,* 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

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

factors such as second-degree frostbite in 1988 or diabetic neuropathy. Therefore, this evidence is insufficient to meet appellant's burden of proof.[6]

Appellant submitted a certification of healthcare provider report from Dr. Cole dated February 5, 2015 who had treated appellant for an Achilles injury and heel pain aggravated by prolonged standing and walking. Dr. Cole recommended physical therapy and noted that appellant was unable to walk or stand for prolonged periods of time and was totally disabled from January 28 to February 9, 2015. The Board finds that, although Dr. Cole indicated that appellant was injured at work, she did not provide medical rationale explaining the basis of her conclusory opinion regarding the causal relationship between appellant's condition and the factors of employment.[7] Therefore, this evidence is insufficient to meet appellant's burden of proof.

In his February 4, 2015 report, Dr. Cole reported that appellant related that prolonged standing at the employing establishment window caused pain in his feet. She noted diagnoses and found appellant was disabled from January 28 to February 9, 2015. However, Dr. Cole's report is insufficient to establish the claim as she failed to provide her own specific opinion as to whether appellant's employment activities caused or aggravated a diagnosed medical condition.[8]

Appellant submitted a February 20, 2015 report from Dr. Albright who treated him for service-connected frostbite with residual neuropathic pain. He reported working at the employing establishment as a stamp and window clerk where he was required to stand during his shift and experienced progressive symptoms of tingling and dysesthesia in his feet. Dr. Albright diagnosed progressive neuropathy of the feet to the legs and postural fatigue/myalgia. However, she merely repeats the history of injury as reported by appellant without providing her own opinion regarding whether appellant's condition was work related. To the extent that Dr. Albright is providing her own opinion, she failed to provide a rationalized opinion regarding the causal relationship between appellant's bilateral foot condition and the factors of employment believed to have caused or contributed to such condition.[9] Therefore, this report is insufficient to meet appellant's burden of proof.

There is no evidence that the unsigned compensation and pension examination report dated July 26, 1997 is not from a physician. Medical documents not signed by a physician and

[6] *See L.D.*, Docket No. 09-1503 (issued April 15, 2010) (the fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two).

[7] *See T.M.*, Docket No. 08-975 (issued February 6, 2009) (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).

[8] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[9] *See supra* note 7.

lacking proper identification do not constitute probative medical evidence.[10] Additionally, this report significantly predates the time of the claimed conditions of 2004.

The remainder of the medical evidence either predates the onset of the claimed occupational disease or does not provide an opinion on the causal relationship between appellant's job and his diagnosed bilateral foot conditions. For this reason, this evidence is not sufficient to meet appellant's burden of proof.[11]

Appellant also submitted a VA benefits decision dated November 14, 1997 which granted him a 10 percent service-connected frostbite award for both feet. The Board has also held that entitlement to benefits under another act or statute does not establish entitlement to benefits under FECA.[12]

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 did not meet his burden of proof to establish an occupational disease claim due to factors of his employment.

[10] *See R.M.*, 59 ECAB 690 (2008); *Bradford L. Sullivan*, 33 ECAB 1568 (1982) (where the Board held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in FECA).

[11] *See supra* note 8.

[12] *Freddie Mosley*, 54 ECAB 255 (2002).

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 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