United States Department of Labor
Employees' Compensation Appeals Board

W.S., Appellant	)	
and	)	**Docket No. 16-1183**
	)	**Issued: November 3, 2016**
U.S. POSTAL SERVICE, POST OFFICE, East Rockaway, 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:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 11, 2016 appellant, through counsel, filed a timely appeal of an April 5, 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 merit decision in the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish an occupational disease causally related to factors of his 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 September 26, 2014 appellant then a 58-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that he developed osteoarthritis, ulceration, and infection of his right big toe as a result of prolonged standing and walking while performing his letter carrier duties. He first became aware of his condition on August 29, 2014. Appellant stopped work on September 6, 2014.

In a September 26, 2014 statement, appellant advised that his mail carrier duties included lifting, sorting, carrying, and delivering mail and parcels for eight hours a day, five to six times a week. His route required that he lift, bend, walk, carry, reach, throw, trot, kneel, climb, and descend stairs. Appellant noted that his job was physically demanding and it was commonplace to hit, bang, stub, twist, and wrench his feet while working. He indicated that his job duties contributed and exacerbated his foot condition which resulted in osteomyelitis and amputation of toes. Appellant requested a change of assignment.

Appellant submitted a September 5, 2014 work excuse note from Dr. Leon Livingston, a podiatrist, who treated appellant for a right foot ulcer. Dr. Livingston noted that development of the ulcer was most likely due to repetition of trauma to the toe. He noted that appellant was disabled beginning September 5, 2014. In a September 12, 2014 work excuse note, Dr. Livingston advised that appellant was treated for a foot problem and was excused from work from September 12 to 19, 2014. He indicated in a September 19, 2014 work excuse note that appellant was treated for chronic foot problems and was able to return to light duty on September 22, 2014.

Dr. Lowell B. Taubman, a Board-certified orthopedist, provided a September 22, 2014 disability note documenting that appellant underwent a toe amputation and had severe gout. He advised that appellant had an infection on another toe and would not be able to work in his previous capacity due to his foot disorders.

By letter dated November 6, 2014, OWCP advised appellant of the type of evidence needed to establish his claim, particularly requesting that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

Appellant submitted work excuse notes from Dr. Livingston dated October 4 and 23, 2014, who treated appellant for foot problems and advised that he was unable to perform work activities including walking or standing. Dr. Livingston noted that appellant was only able to sit and perform light-duty work. On November 21, 2014 he noted that appellant was treated for a foot problem.

Appellant submitted a November 22, 2014 note from Dr. Taubman who noted that appellant was unable to work due to cellulitis of the right foot. On December 5, 2014 Dr. Taubman treated appellant in follow up for his diagnosed gout and cellulitis of the toe. Appellant submitted a work excuse note from Dr. Brandon Naing, a podiatrist, dated December 4, 2014, who indicated that appellant was treated for an ulcer and was unable to work at that time. Dr. Naing excused appellant from work beginning December 4, 2014.

Appellant was treated by Dr. David J. Sands, a podiatrist, who, in a December 10, 2014 report, noted appellant's chronic recurrent ulceration on his right great toe. Dr. Sands advised that appellant had a rigid hammered great toe and idiopathic neuropathy which caused blunting of sensation. He opined that appellant's job as a letter carrier and the excessive amount of ambulation directly led to the development of his toe ulceration.

In a January 9, 2015 decision, OWCP denied appellant's claim because he failed to establish that his claimed medical condition was causally related to the established work-related events.

On December 31, 2015 appellant requested reconsideration. He submitted an October 6, 2015 report from Dr. Sands who treated appellant for an evaluation of a nonhealing ulcer of his right great toe. Appellant reported that the ulcer occurred within a few months prior to his initial visit without any history of injury. Dr. Sands noted that appellant worked as a letter carrier and the ulceration prevented him from resuming his job. He noted that appellant's medical history was significant for hypertension, kidney stones, idiopathic neuropathy, a second toe right foot amputation secondary to an infection in 2012, and an Achilles tendon repair of his right foot in 2007. Dr. Sands noted findings of a small open ulceration noted at the distal aspect of his right great toe with a healing granular base, high arch bilaterally with rigid contracture of the right great toe at the interphalangeal joint and metatarsal phalangeal joint consistent with hammertoe deformity. He recommended that appellant significantly reduce his weight bearing activities, use an orthotic, and continue with wound care. Dr. Sands opined, based on his evaluation, that appellant's condition was a direct result of appellant's vocation.

In an undated report, Dr. Sands noted that appellant was treated for a chronic ulcer on his right great toe. He noted that the right great toe ulcer was recurrent due to severe deformity and arthritis of his feet and idiopathic neuropathy with an altered sense of sensation. Dr. Sands advised that appellant had his right second toe amputated due to an ulcer with infection. Dr. Sands indicated that appellant worked as a letter carrier and that his ulceration prevented him from working. He again recommended that appellant significantly reduce his weight bearing activities and noted that appellant would be a candidate for reconstructive surgery if his ulcer did not resolve. Dr. Sands opined that appellant's condition was a "direct result" of his vocation.

Appellant submitted a report from Dr. John Feder, a Board-certified orthopedist, dated December 10, 2015, who noted treating appellant since February 9, 2012. Dr. Feder noted that appellant was a letter carrier and while performing his job duties it was commonplace for him to hit, bang, and stub his toes, feet, and knees. He noted that appellant presented with complaints of chronic pain and ulcer in the right second toe. A magnetic resonance imaging (MRI) scan of the right foot revealed mild-to-moderate soft tissue swelling, suspicious lesion within distal soft tissues right second toe, no definite adjacent cortical destruction, focal edema within the second nail bed or diffuse bone marrow edema likely related to an underlying contusion, and an underlying inflammatory process or osteomyelitis. Dr. Feder noted an x-ray of the right foot revealed second hammertoe and osteoarthritis. On April 23, 2012 he performed second toe terminal amputation and the pathology report confirmed chronic ulceration and osteomyelitis. Dr. Feder diagnosed right second toe terminal amputation, neuropathy, history of right second toe osteomyelitis, history of ulcer of right second toe, secondary localized osteoarthrosis of the ankle and foot, and pain in joints involving foot and ankle. He noted that "if the history reported

to me is accurate then there is a direct causal relationship between [appellant's] right toe, ankle, and foot from working as a … [mail carrier]. [Appellant] has underlying neuropathy."

In a decision dated April 5, 2016, OWCP denied modification of the February 11, 2015 decision.

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 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. The employee must also establish that such event, incident, or exposure caused an injury.[3]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.[4] To establish fact of injury in an occupational disease claim, 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]

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.[6]

ANALYSIS

It is undisputed that appellant's duties as a mail carrier included lifting, sorting, carrying bending, walking, reaching, throwing, trotting, kneeling, and climbing and descending stairs while delivering mail and parcels for eight hours a day, five to six times a week. However, appellant has not submitted sufficient medical evidence to establish that his diagnosed medical conditions are causally related to factors of his federal employment.

[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] *S.P.*, 59 ECAB 184, 188 (2007).

[5] *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

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

Appellant submitted an undated report from Dr. Sands who treated him for a recurrent right great toe ulcer which was due to severe deformity of the feet, arthritis and idiopathic neuropathy and altered sensation. Dr. Sands advised that appellant had his right second toe amputated due to an ulcer with infection. He noted appellant's job duties and opined that appellant's condition was a "direct result" of his vocation. Similarly, on December 10, 2014 Dr. Sands opined that due to his job as a letter carrier, and the excessive amount of ambulation that his job required, directly led to the development of his toe ulceration. Likewise, in an October 6, 2015 report, Dr. Sands treated appellant for an evaluation of a nonhealing ulcer of his right great toe. He opined that based on his evaluation appellant's condition was a direct result of his vocation. The Board finds that, although Dr. Sands supported causal relationship, he did not provide sufficient medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's right great toe ulcer and the factors of employment.[7] For example, he did not explain the process by which prolonged walking would cause the diagnosed condition and why such condition would not be due to any nonwork factors such as age-related arthritis, congenital foot deformity, or idiopathic neuropathy.[8] Therefore, this report is insufficient to meet appellant's burden of proof.

In a December 10, 2015 report, Dr. Feder advised that when carrying out his duties as a letter carrier it was commonplace for appellant to hit, bang, and stub his toes, feet, and knees. He noted an x-ray of the right foot revealed second hammertoe and osteoarthritis. On April 23, 2012 Dr. Feder performed second toe terminal amputation. He diagnosed right second toe terminal amputation, neuropathy, history of right second toe osteomyelitis, history of ulcer of right second toe, secondary localized osteoarthrosis of the ankle and foot, and pain in joints involving foot and ankle. Dr. Feder noted that "if the history reported to me is accurate then there is a direct causal relationship between [appellant's] right toe, ankle, and foot from working as a … [mail carrier]. [Appellant] has underlying neuropathy." The Board notes that Dr. Feder's report provides some support for causal relationship, but is insufficient to establish the claimed conditions are causally related to his employment duties. Dr. Feder's reports, at best, provide speculative support for causal relationship as he noted "if the history reported to me is accurate" there was a direct causal relationship between his right toe, ankle, and foot and his employment duties.[9] He did not provide medical reasoning explaining how or why particular workplace substances or conditions caused or aggravated a diagnosed condition. The need for medical rationale is particularly important in view of appellant's underlying right lower extremity neuropathy. Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant submitted work excuse notes from Dr. Livingston dated September 5 to November 21, 2014, who treated appellant for a right foot ulcer and noted that he was unable to perform his normal work duties including walking or standing from September 5 to November 21, 2014. Dr. Livingston noted that appellant could return to sedentary light duty on

[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] *Id.*

[9] *See D.D.*, 57 ECAB 734 (2006) (medical opinions that are speculative or equivocal in character are of diminished probative value).

September 22, 2014. He noted that development of the ulcer most likely was due to repetition of trauma to the toe. Similarly, a work excuse note from Dr. Naing dated December 4, 2014 indicated that appellant was treated for an ulcer and was unable to perform normal work activities. However, these notes fail to provide a history of injury[10] or offer a rationalized opinion addressing how specific work activities caused or contributed to a diagnosed medical condition.[11]

On September 22, 2014 appellant was treated by Dr. Taubman who noted findings of severe gout and performed a toe amputation. Dr. Taubman noted that appellant had an infection on another toe and would not be able to work in his previous capacity due to his foot disorders. On November 22 and December 5, 2014 he diagnosed gout and cellulitis of the toe and noted that appellant was totally disabled. Dr. Taubman's reports as well are insufficient to establish the claim as he did not provide a history of injury[12] or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.[13]

On appeal, appellant disagrees with OWCP's decision denying his claim for compensation and asserts that he submitted sufficient evidence to establish his claim. As noted above, the medical evidence of record does not establish that appellant's diagnosed conditions are causally related to his employment. Reports from appellant's physician failed to provide sufficient medical rationale explaining how appellant's injuries are causally related to particular employment factors.

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 causally related to factors of his employment.

[10] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

[11] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[12] *Supra* note 10.

[13] *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).

ORDER

IT IS HEREBY ORDERED THAT the April 5, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 3, 2016
Washington, DC

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

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

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