United States Department of Labor
Employees' Compensation Appeals Board

N.L., Appellant	)	
and	)	**Docket No. 17-1202**
	)	**Issued: August 25, 2017**
U.S. POSTAL SERVICE, OMAHA VEHICLE MAINTENANCE FACILITY, Omaha, NE, 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 May 10, 2017 appellant filed a timely appeal from an April 28, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of 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 federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 2, 2017 appellant, then a 48-year-old tire repairman, filed an occupational disease claim (Form CA-2) alleging that he developed flat feet, heel spurs, and knee pain after working in the employing establishment garage since 1987. He did not stop work.

Dr. Michael C. Thompson, a Board-certified orthopedic surgeon, completed an attending physician's report (Form CA-20) on March 10, 2017 and diagnosed chronic insertional Achilles tendinitis. He checked a box marked "yes" to indicate that appellant's condition was caused or aggravated by an employment activity. In his March 10, 2017 treatment note, Dr. Thompson examined appellant due to painful feet. He noted that appellant worked at the employing establishment and that he denied any traumatic injuries. Dr. Thompson diagnosed physiologic *pes planus* with secondary Achilles tendon contracture, and symptomatic chronic insertional Achilles tendinosis, right greater than left. He opined, "The Achilles tendon problem is purely a degenerative problem related to genetics more than anything. It does not represent a work-related injury." Appellant also submitted a form report from a physician assistant dated March 10, 2017, as well as physical therapy notes.

Dr. John D. Galligan, an orthopedic surgeon, examined appellant on March 10, 2017 due to bilateral knee pain. He noted that appellant worked as a mechanic and was required to be on his feet with a fair amount of lifting. Dr. Galligan diagnosed mild osteoarthritis of both knees. He noted, "[Appellant] cannot really relate this specifically to his job, it could just be general wear and tear."

In a letter dated March 14, 2017, OWCP requested that appellant provide additional factual and medical evidence in support of his occupational disease claim. It afforded him 30 days for a response. Appellant responded on March 17, 2017 and noted his claim was for both knees and feet. He noted that his job required him to constantly be on his feet on a cement floor. Appellant also reported surgeries to both shoulders due to his employment as well as his current conditions of flat feet, heel spurs, and problems with both knees. He provided a compact disc (CD) containing diagnostic studies.

Dr. Nicholas Wegner, an orthopedic surgeon, completed an attending physician's report on March 30, 2017 and diagnosed Achilles tendinitis on the left. He indicated that appellant's condition was aggravated by his employment activities.

Dr. Thompson examined appellant on March 22 and 30, 2017 and again opined that appellant's physiologic *pes planus* deformity secondary to Achilles tendon contracture as well as symptomatic chronic insertional Achilles tendinosis right greater than left were not work-related injuries. He did note that appellant was required to perform significant standing in his eight-hour shift as a mechanic.

By decision dated April 28, 2017, OWCP denied appellant's occupational disease claim finding that the medical evidence of record did not establish a causal relationship between his diagnosed conditions and his implicated employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained 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]

OWCP's regulations define an occupational disease as a condition produced by the work environment over a period longer than a single workday or shift.[4] 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) a 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.

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.[5] Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.[6] The belief of a claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relation.[7]

ANALYSIS

The Board finds that appellant has failed to meet his burden of proof to establish that he developed an occupational disease causally related to factors of his federal employment.

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[2] *Id*.

[3] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[4] 20 C.F.R. § 10.5(q).

[5] *T.F.*, 58 ECAB 128 (2006).

[6] *A.D.*, 58 ECAB 149 (2006).

[7] *Lourdes Harris*, 45 ECAB 545, 547 (1994).

In support of his occupational disease claim for injury to his feet and knees, appellant submitted several medical reports. Dr. Thompson diagnosed chronic insertional Achilles tendinitis on his March 10, 2017 form report. He checked a box marked "yes" to indicate that appellant's condition was caused or aggravated by an employment activity. Dr. Wegner also completed a form report diagnosing Achilles tendinitis on the left. He also indicated that appellant's condition was aggravated by his employment activities. The Board has held that an opinion on causal relationship which consists only of a physician checking a box marked "yes" in answer to a medical form report question of whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[8] As neither Dr. Thompson nor Dr. Wegner provided any explanation or rationale supporting their opinions that appellant's conditions were related to this employment, these reports are insufficient to meet his burden of proof.

The Board has held that the fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[9] An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that the employee's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment sufficient to establish causal relationship.[10] To establish a firm medical diagnosis and causal relationship, he must submit a physician's report that addresses how the accepted employment factors of standing and lifting caused or aggravated his bilateral knee and foot conditions.

In his March 10, 22, and 30, 2017 treatment notes, Dr. Thompson diagnosed physiologic *pes planus* with secondary Achilles tendon contracture, and symptomatic chronic insertional Achilles tendinosis, right greater than left. He found that appellant's Achilles tendon condition was genetic rather than related to his work duties. Dr. Galligan also completed a March 10, 2017 note and diagnosed mild osteoarthritis of both knees. He described appellant's work duties of standing and lifting, but concluded that his osteoarthritis was "general wear and tear." These notes do not support appellant's occupational disease claim as Dr. Thompson and Dr. Galligan negated a causal relationship between appellant's employment duties and his condition.[11]

Appellant also submitted records from a physician assistant and a physical therapist. FECA provides that a physician includes: surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as

[8] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

[9] *D.W.*, Docket No. 16-0639 (issued August 5, 2016); *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[10] *D.W., id.*; *D.U.*, Docket No. 10-0144 (issued July 27, 2010) *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

[11] *S.C.*, Docket No. 16-0293 (issued May 10, 2016).

defined by state law.[12] Healthcare providers such as licensed clinical social workers, nurses, acupuncturists, physician assistants, and physical therapists are not considered physicians under FECA and their reports and opinions do not constitute competent medical evidence to establish a medical condition, disability or causal relationship.[13]

Appellant may submit new evidence[14] 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 failed to meet his burden of proof to establish an occupational disease causally related to factors of his federal employment.

[12] 5 U.S.C. § 8101(2); *R.G.*, Docket No. 16-0271 (issued May 18, 2017) (physical therapists are not physicians under FECA); *V.C.*, Docket No. 16-0642 (issued April 19, 2016) (physician assistants are not physicians under FECA); *David P. Sawchuk*, 57 ECAB 316, 320n.11 (2006). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[13] *See David P. Sawchuk, id.*; *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

[14] The Board notes that appellant provided a CD with his diagnostic studies on it. As these documents do not contain a physician's description of the causal relationship between appellant's diagnosed condition and his employment, they do not establish appellant's occupational disease claim. *See T.C.*, Docket No. 16-1652 (issued May 9, 2017).

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2017
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