

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

T.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Buffalo, NY, Employer**

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**Docket No. 17-0091
Issued: July 25, 2017**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 21, 2016 appellant, through counsel, filed a timely appeal from an August 19, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 the accepted 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 May 4, 2015 appellant, then a 58-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he experienced pain and difficulty walking as a result of repetitively standing, climbing, driving, and walking a minimum of eight hours a day in the performance of duty. He did not stop work.

In an attached narrative statement, appellant indicated that he was diagnosed with peripheral polyneuropathy in both feet on October 8, 2013. He described that his employment duties involved casing mail, which required walking to and from a letter case and to receive letters and flats. Appellant related that he also walked to receive his parcel bucket and to load his truck for distribution. He alleged that his feet were very sore to walk on and that he experienced significant pain after work.

Appellant was treated by Dr. David E. Hoffman, a Board-certified neurologist. In an October 8, 2013 report, Dr. Hoffman indicated that he examined appellant due to paresthesia in both feet, which had been ongoing for about 18 months. He noted that appellant worked as a mail carrier and that his job involved walking for about seven hours a day. Dr. Hoffman related that appellant complained of tingling in his toes and adjacent soles, tightness, and feeling constricted in his forefeet. He reviewed appellant's history and provided findings on physical examination. Dr. Hoffman observed unelicitable ankle reflexes and distal sensory loss over the lower limbs including vibration. He opined that appellant had peripheral polyneuropathy, which was "aggravated by being on his feet virtually 8 hours a day, 5 days a week." Dr. Hoffman recommended that appellant retire at the end of the year since "walking [had] been an aggravating factor regarding the symptomatic polyneuropathy."

In an October 8, 2013 electromyography (EMG) and nerve conductive velocity (NCV) study report, Dr. Hoffman related appellant's complaints of tightness and numbness affecting both feet for the past 18 months. He observed electrical evidence of a length-dependent, predominantly axonal sensorimotor polyneuropathy. Dr. Hoffman concluded that the electrodiagnostic study was abnormal.

Dr. Hoffman continued to treat appellant. In an October 13, 2014 report, he indicated that appellant returned for follow-up examination of remote seizures and polyneuropathy. Dr. Hoffman related that appellant's clinical examination and electrodiagnostic testing done a year ago confirmed a length-dependent, predominantly axonal, sensorimotor polyneuropathy. He explained that appellant had worked for the employing establishment for 29 years and that he drove a mail truck. Dr. Hoffman related appellant's complaints that his feet were bothersome and that his neuropathy became symptomatic as the day progressed, especially on cold days. He reported that appellant should limit his workweek to 40 hours.

In an April 23, 2015 report, Dr. Hoffman noted that appellant had worked for nearly 30 years for the employing establishment delivering mail on foot. He opined that appellant's "work activities [were] definitely aggravating the preexisting condition of polyneuropathy." Upon examination, Dr. Hoffman reported good gait balance with no falls. He also observed palpable low pulses and no trophic changes over appellant's feet. Dr. Hoffman indicated that clinical neurological examination was abnormal. He explained that there was distal hypesthesia over

both legs, including vibration, temperature perception, light touch, and to a lesser extent, kinesthesia. Dr. Hoffman related that electrodiagnostic testing on that date was again abnormal, diagnosing a length-dependent, predominately axonal, sensorimotor polyneuropathy. He opined that appellant had a symptomatic polyneuropathy, primarily involving sensory complaints, as confirmed by electrodiagnostic testing and clinical neurologic examination.

By letter dated June 18, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish an occupational disease claim. It requested that he submit additional medical evidence to establish that the diagnosed condition of peripheral polyneuropathy was caused or aggravated by his employment. Appellant was afforded 30 days to submit the requested information. OWCP issued a similar letter dated June 18, 2015 to the employing establishment.

Dr. Hoffman responded to OWCP's development letter in a letter dated July 7, 2015. He indicated that he was enclosing an October 8, 2013 electrodiagnostic study report and October 13, 2014 examination note, which clearly defined appellant's problem. Dr. Hoffman reported that appellant had polyneuropathy in both feet and that his symptoms worsened as the day progressed. He related that appellant had worked for the employing establishment for more than 29 years driving a truck and walking on his feet much of the day. Dr. Hoffman noted that the temperature in New York was often very cold, which was an aggravating factor to increase his foot discomfort. He explained:

"The polyneuropathy was not caused by his employment. Nevertheless, the neuropathy is permanent and his work duties significantly aggravate symptoms related to his preexisting condition. The neuropathy was confirmed by electrodiagnostic testing. In my professional opinion, his duties as a postal worker (standing and walking for several hours each day) substantially aggravates the pain associated with his polyneuropathy."

OWCP denied appellant's claim in a decision dated August 5, 2015. It accepted his repetitive duties as a letter carrier, especially walking, and a diagnosis of peripheral polyneuropathy. OWCP denied appellant's claim because the medical evidence of record failed to establish that his diagnosed condition was causally related to the accepted employment factors. It determined that Dr. Hoffman failed to provide medical rationale explaining how appellant's employment aggravated his bilateral foot condition.

On September 29, 2015 OWCP received appellant's request for reconsideration.

Appellant also submitted a letter from Dr. Hoffman dated September 9, 2015. Dr. Hoffman explained that because of appellant's neurological condition, he was rendered more vulnerable in the effects of walking. He related that appellant's condition limited his ability to be on his feet for extended periods without significant foot pain. Dr. Hoffman noted, however, that his neurological condition was not caused by walking and was not secondary to "repetitive stress." He reported that given the severity of appellant's underlying neurological condition, prolonged walking was more painful than it would have been if appellant did not have that condition.

By decision dated February 23, 2015, OWCP denied modification of its prior decision. It found that the new medical evidence from Dr. Hoffman lacked a well-reasoned medical explanation as to how appellant's mail carrier duties aggravated his preexisting peripheral polyneuropathy.

On May 23, 2016 OWCP received appellant's request, through counsel, for reconsideration. Counsel noted that he was enclosing a medical report dated January 26, 2016 from Dr. Hoffman, which was not previously considered.

In a January 26, 2016 letter, Dr. Hoffman clarified that the underlying neuropathy itself was not worsened by walking, but the symptoms of neuropathy were intensified by walking. He indicated that when neuropathic pain developed while walking, the appropriate choice was to stop walking and rest. Dr. Hoffman noted that when walking is a mandatory part of a job description, such as mail delivery, the choice of sitting and resting was not available because the job must be completed. He related that the required walking for mail carriers translated into foot pain and disability that could have been eased if walking could have been curtailed. Dr. Hoffman opined that the "disability from [appellant's] neuropathy was significantly contributed to by the imperative of having to be on his feet several hours a day delivering mail." He indicated that walking "provoke[d] symptoms of the underlying neuropathy" similar to the way sitting provoked symptoms of underlying spinal disease. Dr. Hoffman reported that the demands of job-related walking significantly increased disability (pain) related to appellant's neuropathy.

Dr. Hoffman provided a June 27, 2016 letter in which he reiterated that appellant's work did not cause his polyneuropathy nor aggravate the underlying pathology of his polyneuropathy. He noted that regardless of the cause of appellant's condition, worsening pain while walking could be an uncomfortable by-product. Dr. Hoffman opined: "I do not believe that the repetitive activities of walking his postal route constituted a medical problem. I do believe that those activities intensified the symptoms of his preexisting medical condition." He further clarified that appellant's neuropathy was not caused or worsened by his work activities, but the underlying neuropathy itself rendered his feet more sensitive to walking. Dr. Hoffman concluded that appellant's "job duties involved considerable walking, which served to aggravate his preexisting condition, from a symptomatic point of view only."

By decision dated August 19, 2016, OWCP denied modification of its prior decision. It found that the medical evidence of record failed to establish causal relationship between appellant's peripheral polyneuropathy and his employment duties. OWCP determined that Dr. Hoffman merely opined that appellant's repetitive walking worsened the symptoms of appellant's peripheral neuropathy, but he did not provide a well-rationalized opinion that appellant's medical condition was caused or aggravated by his employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial

³ *Supra* note 2.

evidence⁴ 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.⁵ 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.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁷ 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.⁸

ANALYSIS

Appellant has alleged that he developed peripheral polyneuropathy in both feet as a result of his employment duties. OWCP accepted his employment factors and a diagnosis of peripheral polyneuropathy, but it denied his claim because the medical evidence of record failed to establish causal relationship between appellant's medical condition and the accepted factors of employment. The Board finds that appellant has not met his burden of proof to establish that his bilateral foot condition was causally related to his employment.

In support of his claim, appellant submitted various reports and letters by Dr. Hoffman dated October 8, 2013 to June 27, 2016. He related appellant's complaints of paresthesia, tingling, and tightness in his feet and toes. Dr. Hoffman reviewed appellant's history and noted that he worked as a mail carrier for nearly 30 years, which required walking for about seven hours a day. Appellant indicated that his feet became symptomatic as the day progressed, especially on cold days. Upon initial examination on October 8, 2013, Dr. Hoffman observed unelicitable ankle reflexes and distal sensory loss over the lower limbs including vibration. He noted that neurological examination and electrodiagnostic testing were abnormal for length-dependent, predominately axonal, sensorimotor polyneuropathy. Dr. Hoffman opined that appellant had peripheral polyneuropathy, which was "aggravated by being on his feet virtually 8 hours a day, 5 days a week." The Board finds that Dr. Hoffman accurately described appellant's history and provided findings on physical examination. Although he provided an opinion on

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁷ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

causal relationship, he did not provide any medical rationale or explanation as to how appellant's bilateral foot condition was aggravated by being on his feet all day. The Board has found that 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

In a letter dated July 7, 2015, Dr. Hoffman clarified that appellant's polyneuropathy was not caused by his employment. He explained that appellant's "work duties significantly aggravate symptoms related to his preexisting condition." Dr. Hoffman related that appellant's employment duties, specifically standing and walking for several hours each day, substantially aggravated the pain associated with appellant's polyneuropathy. In a June 27, 2016 letter, he concluded that considerable walking, which was one of appellant's job duties, served to aggravate appellant's preexisting condition, from a "symptomatic point of view only."

It is undisputed that appellant has a diagnosed peripheral polyneuropathy. His work duties are also undisputed. However, Dr. Hoffman did not provide an explanation, based on medical rationale, as to how appellant's employment duties would have physiologically caused or contributed to his polyneuropathy condition.¹⁰ On the contrary, he explicitly denied that appellant's employment duties caused or aggravated appellant's bilateral feet condition, but instead appears to attribute a worsening of appellant's symptom of pain to his employment duties. 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 causal relationship based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.¹¹

On appeal, counsel alleges that the August 18, 2016 OWCP decision was contrary to fact and law. He has not, however, provided any evidence or additional argument to establish that OWCP improperly denied appellant's occupational disease claim. Causal relationship is a medical question that must be established by probative medical opinion from a physician.¹² The Board finds that appellant has not met his burden of proof to establish his claim.

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 has not met his burden of proof to establish an occupational disease claim causally related to the accepted factors of his federal employment.

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

¹⁰ *See M.M.*, Docket No. 15-607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

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

¹² *W.W.*, Docket No. 09-1619 (issued June 2010); *David Apgar*, 57 ECAB 137 (2005).

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 2017
Washington, DC

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

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

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