

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

C.B., Appellant)
and) Docket No. 17-0726
U.S. POSTAL SERVICE, POST OFFICE,) Issued: July 3, 2017
Duluth, GA, Employer)

)

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
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 February 13, 2017 appellant, through counsel, filed a timely appeal from a January 5, 2017 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 her burden of proof to establish a bilateral foot/ankle condition was causally related to accepted factors of her 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 July 30, 2014 appellant, then a 49-year-old modified mail handler, filed an occupational disease claim (Form CA-2) for a bilateral foot condition, which she described as pain in both feet. She indicated that she first became aware of her condition on April 2, 2014 and it was not until July 9, 2014 that she first realized the condition was caused or aggravated by factors of her federal employment. Regarding the cause of her bilateral foot condition, appellant indicated that she performed prolonged standing and repetitive work. She claimed that her job duties required that she stand on concrete four hours a day. Appellant continued to work when she filed her Form CA-2.³

In an accompanying statement, appellant indicated that she had worked for the employing establishment since November 1997 and noted that her normal duties as a mail handler included lifting up to 70 pounds, bending, stooping, twisting, turning, pushing, pulling, and engaging in prolonged walking and standing. She advised that she normally worked at least eight hours per day, five days per week. Appellant indicated that she originally sustained an injury in 2006, which was accepted for work-related plantar fibromatosis and peripheral neuropathy. She noted that she reinjured herself in 2010 and that, after a period off work, she had been working four hours per day due to restrictions from her physician. Appellant indicated that her present work required her to stand while opening sacks of mail on a conveyor belt and she noted that she took frequent breaks. She expressed her belief that this prolonged standing was aggravating the injuries that she previously sustained to her feet and ankles. Appellant indicated that pain traveled from her feet up into her legs, that she had pain in her left knee and back, and that the pain was worse when she engaged in prolonged standing, bending, and reaching at work. She indicated that the pain has come and gone, but it became more constant on April 2, 2012.

In an August 7, 2014 letter, a management specialist for the employing establishment challenged appellant's occupational disease claim. She indicated that appellant was not required to lift 70 pounds as alleged and noted that she had not submitted a rationalized medical opinion relating a diagnosed condition to employment factors. The specialist discussed some of appellant's prior claims with OWCP, noting that she had a claim considered under a separate File No. xxxxxx490 which was closed on July 9, 2014 with all benefits paid. She attached a February 28, 2014 letter, produced in connection with one of appellant's prior claims, in which she indicated that appellant worked a four-hour day (comprised of three hours of actual work with four 15-minute breaks), that the only required walking was between her vehicle and the building at the beginning and end of the day, and that she was not required to engage in lifting, pushing, pulling, bending, or stooping. The specialist noted that appellant only had to open sacks of mail on a waist-high conveyor belt and allow the belt to carry the mail into containers.

Appellant submitted July 9, 2014 report in which Dr. Jean Valcourt, an attending Board-certified internist, noted that she reported injuring her left foot at work on September 25, 2006 and her right foot at work in 2010. She reported that she was off work for six months after the

³ Under OWCP File No. xxxxxx490, appellant has an accepted occupational disease claim for bilateral plantar fasciitis/fibromatosis and left peripheral neuropathy, which arose on or about September 25, 2006. At the time she filed the current claim, she had been working as a part-time modified mail handler as a result of her previously accepted bilateral foot condition under OWCP File No. xxxxxx490.

2010 injury and that she had been working four hours per day since 2009.⁴ Dr. Valcourt noted that appellant indicated that she returned to work after the 2010 injury in a light-duty position for four hours per day. Appellant reported that the job involved removing mail from mail sacks and that she alternated the act of standing for two hours with taking a break for 15 minutes. Dr. Valcourt noted that, upon physical examination, she had trace edema in feet and ankles, mild tenderness at the plantar area, and plantar calluses. Appellant's pulses were normal and she had good capillary refill. Dr. Valcourt diagnosed ankle strain, plantar fasciitis, and plantar calluses and indicated that, after reviewing her job duties, he felt that she had an occupational injury.

In his July 9, 2014 report, Dr. Valcourt further noted that appellant had continued to perform the same duties of standing, lifting, walking, and bending and indicated that these were repetitive duties that were "directly the result of her current medical condition." He noted that she had aggravated her prior foot/ankle injuries and indicated that the mechanism of injury was consistent with the reporting of the injury and his objective findings. Dr. Valcourt advised that, even though appellant had only been performing limited-duty work for four hours per day, she had been "performing repetitive duties that have continued to aggravate [appellant's] previous injury [and] therefore [she] has suffered an occupational injury." He discussed her medications and referred her for physical therapy.

In an August 15, 2014 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted a September 11, 2014 statement in which she indicated that she took a 15-minute break after each time she performed her work for an hour. She took issue with the statements of the employing establishment officials regarding the requirements of her limited-duty work and asserted that her position required her to engage in significant pulling and lifting of mailbags. The description of a limited-duty offer made to appellant on December 10, 2013 provides that the position involved up to three hours of standing, one hour of sitting (four 15-minute breaks), up to two hours of walking (to cut straps and prepare containers down the conveyor belt), and up to two hours of pulling, pushing, lifting, and carrying up to 10 pounds. Appellant was required to sort mail and open and dump sacks of mail.

In a report dated September 11, 2014, Dr. Valcourt provided findings on physical examination which were the same as provided in his July 9, 2014 report. He indicated that appellant had to stand for up to an hour at a time, then took a break, and repeated this routine for up to four hours per day. Dr. Valcourt noted that appellant reported having to use a piece of equipment to pull mail sacks down a shoot and onto a conveyor belt, and having to push wire cages full of mail to a staging point next to the conveyor belt. She noted that appellant had continued to perform the same duties of standing, lifting, walking, and bending and noted that she had aggravated her preexisting injuries from 2009 and 2010. Dr. Valcourt indicated that the mechanism of injury was consistent with the reporting of the injury and his objective findings. He noted that, even though appellant had only been performing limited-duty work for four hours per day, she had been performing repetitive duties that have continued to aggravate her previous injury.

⁴ Dr. Valcourt noted that appellant reported she had previously worked eight hours per day for five days per week and that her duties included heavy lifting, bending, standing, twisting, walking, and driving postal equipment.

By decision dated October 28, 2014, OWCP denied appellant's claim, finding that she had not submitted medical evidence sufficient to establish a diagnosed condition due to established employment factors. It noted that the medical reports of record did not contain a rationalized medical opinion differentiating between the claimed new work-related disease and the prior injury to her feet/ankles.

That same date, appellant requested reconsideration and submitted additional medical evidence in support of her claim.

In a November 3, 2014 report, Dr. Zouheir Shama, an attending Board-certified general surgeon, discussed appellant's medical history, including her injuries in 2006 and 2010, and described her limited-duty job as requiring her to stand for up two hours before taking a 15-minute break. Appellant reported that she was required to lift mail sacks over her shoulder in order to dump mail on a conveyor belt and use a pole to release mail that got stuck in a shoot. Dr. Shama diagnosed bilateral ankle strains, plantar fasciitis, and plantar calluses. He concluded that appellant suffered an occupational injury to her ankles and feet due to the "constant standing, walking, pushing, and pulling" that she was doing for four hours per day work. Dr. Shama indicated that her work duties aggravated her previous right foot injury, caused injury to her left foot, and caused injury to both ankles.

In a report dated February 9, 2015, Dr. Shama modified his description of appellant's limited-duty work to indicate that she worked for up to one hour at a time and then took a 15-minute break. He opined that her bilateral foot and ankle conditions were aggravated by her duties which required "continued and constant standing and walking." Dr. Shama posited that the prolonged standing, walking, pushing, and pulling required by appellant's job created pressure and stress on her ankles and feet and produced swelling and pain symptoms.

In a report dated October 14, 2015, Dr. Jay B. Bender, an attending Board-certified orthopedic surgeon, indicated that appellant reported that she sustained injury on April 2, 2014 from repetitive walking, stooping, twisting, and walking throughout an eight-hour day. He noted that, upon physical examination, she had tenderness to palpation of the bilateral calcaneal areas, right mildly greater than left. Dr. Bender diagnosed bilateral plantar fibromatosis and peripheral neuropathy of the left foot and ordered magnetic resonance imaging (MRI) scan testing of the heels and electromyogram and nerve conduction velocity (EMG/NCV) testing of the lower extremities.

October 21, 2015 left and right foot MRI scans revealed mild-to-moderate retrocalcaneal bursitis in the right heel, moderate retrocalcaneal bursitis in the left heel, and a lesion in the right heel that "could be a vascular abnormality or a neoplasm." The October 21, 2015 bilateral lower extremity EMG/NCV results indicated that the testing was incomplete due to appellant stopping the testing before it could be completed, and also due to a problem with "outside interference" affecting some of the results.

In an October 28, 2015 report, Dr. Bender indicated that appellant reported sustaining injury from engaging in repetitive walking, bending, stooping, and twisting throughout an eight-hour day. He diagnosed bilateral plantar fibromatosis and left foot idiopathic peripheral neuropathy and discussed the diagnostic testing results obtained on October 21, 2015.

Dr. Bender noted that appellant “has sustained an aggravation to a preexisting condition of plantar fasciitis due to repetitive walking and standing within the restrictions of [appellant’s] [four-hour] modified job offer.”

In a decision dated January 27, 2016, OWCP denied modification of the October 28, 2014 decision denying appellant’s claim. It found that appellant’s attending physicians did not provide a rationalized medical opinion regarding the cause of the claimed new injury to her feet and ankles.

On December 14, 2016 appellant, through counsel, requested reconsideration of the January 27, 2016 decision denying her claim.

In a December 12, 2016 report, Dr. Bender indicated that, upon physical examination, appellant exhibited tenderness to palpation of the bilateral calcaneal areas, right greater than left, and had decreased dorsiflexion and plantar flexion. He indicated that, based on his review of her job duties, the physical examination findings he obtained, and a review of the records, she sustained an occupational work injury which was reported as occurring on April 2, 2014. Dr. Bender noted that appellant’s prolonged and repetitive job duties of standing, walking, and driving aggravated the preexisting conditions in her bilateral ankles and feet. He felt that it was pertinent to note that she had lumbar spine issues and that it was known that there is causal relationship between lumbar spine and ankle/foot conditions. Dr. Bender indicated that appellant’s lower extremity radicular symptoms could be exacerbated from her low back condition. He posited that appellant sustained an occupational injury because her preexisting conditions were aggravated by her job duties of constant and prolonged standing, walking, pushing, pulling, climbing, driving, bending, and stooping which caused increased pressure on her ankles, feet, and lumbar spine.

By decision dated January 5, 2017, OWCP denied modification of its January 27, 2016 decision. It noted that the medical reports of record, including the most recent report of Dr. Bender, did not contain medical rationale explaining how she sustained new injury to her feet and ankles due to her work duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 timely filed within the applicable time limitation period of FECA, that the injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ To establish fact of injury, an employee must submit evidence sufficient to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged.⁶ An employee must also establish that

⁵ 5 U.S.C. § 8101(1); *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

such event, incident, or exposure caused an injury.⁷ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

OWCP regulations define the term “[o]ccupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.⁹ To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 diagnosed condition is causally related to the employment factors identified by the employee.¹⁰

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.¹¹ 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 established employment factors.¹²

ANALYSIS

On July 30, 2014 appellant filed an occupational disease claim (Form CA-2) alleging that she experienced pain in both feet due to performing repetitive job duties while standing on a concrete floor. She indicated that she first became aware of her claimed condition on April 2, 2014 and first realized on July 9, 2014 that it was caused or aggravated by her federal employment. At the time she filed her claim, appellant was working in a limited-duty position for four hours per day, which required her to work one hour at a time, take a 15-minute break, and then repeat the routine through the course of the work shift. OWCP denied her claim because she failed to submit a rationalized medical report showing how the claimed new injuries to her feet/ankles were related to her employment duties.

The Board finds that appellant has not submitted sufficient medical evidence to establish a work-related occupational disease injury.

⁷ *Id.*

⁸ *R.H.*, 59 ECAB 382 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁹ 20 C.F.R. § 10.5(q); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.2b (June 2011).

¹⁰ *D.H.*, Docket No. 15-1876 (issued January 29, 2016); *D.I.*, 59 ECAB 158 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

¹² *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

Appellant submitted a July 9, 2014 report in which Dr. Valcourt, an attending physician, noted that appellant reported that her job involved removing mail from mail sacks and that she alternated the act of standing for two hours with taking a break for 15 minutes. He noted that, upon physical examination, appellant had trace edema in both feet and ankles, mild tenderness at the plantar area, and plantar calluses. Appellant's pulses were noted to be normal and she was observed as having good capillary refill. Dr. Valcourt diagnosed ankle strain, plantar fasciitis, and plantar calluses. He noted that appellant had continued to perform the same duties of standing, lifting, walking, and bending and indicated that she had aggravated her prior foot/ankle injuries.

The Board finds that Dr. Valcourt's July 9, 2014 report is of limited probative value to establish a new occupational disease to appellant's feet or ankles because she did not provide adequate medical rationale in support of his opinion on causal relationship. The Board has held 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.¹³ For example, Dr. Valcourt did not discuss in any detail the extent to which appellant performed the various work duties he mentioned and he did not discuss the medical process through which they would have been competent to cause the diagnosed conditions. In addition, his opinion is of limited probative value for the further reason that it is not based on a complete and accurate factual basis.¹⁴ Dr. Valcourt incorrectly indicated that appellant stood for two hours before taking a break, whereas she actually stood for one hour before taking a break.

In a report dated September 11, 2014, Dr. Valcourt correctly indicated that appellant had to stand for up to an hour at a time, then took a break, and repeated this routine for up to four hours per day. However, he essentially repeated his earlier opinion on a work-related cause for her feet and ankle conditions without providing any additional medical rationale in support of his opinion on causal relationship. Dr. Valcourt indicated that the mechanism of injury was consistent with the reporting of the injury and his objective findings, but he did not provide any specific discussion of the mechanism of injury or discuss how the findings on physical examination or diagnostic testing supported his opinion on causal relationship.

In a November 3, 2014 report, Dr. Shama, an attending physician, diagnosed bilateral ankle strains, plantar fasciitis, and plantar calluses. He concluded that appellant suffered an occupational injury to her ankles and feet due to the "constant standing, walking, pushing, and pulling" that she was doing for four hours per day work. In a report dated February 9, 2015, Dr. Shama indicated that her bilateral foot and ankle conditions were aggravated by her duties which required "continued and constant standing and walking." He posited that the prolonged standing, walking, pushing, and pulling required by appellant's job created pressure and stress on her ankles and feet and produced swelling and pain symptoms. Dr. Shama's opinion on causal relationship is of limited probative because he did not explain how specific findings upon physical examination and diagnostic testing supported this opinion. In fact, he did not report any findings on physical examination and it remains unclear whether he ever examined appellant. The Board has held that the absence of a physical examination by a physician may affect the

¹³ C.M., Docket No. 14-0088 (issued April 18, 2014).

¹⁴ See *supra* note 12.

weight to be a given medical report.¹⁵ In addition, Dr. Shama did not provide a detailed discussion of how often appellant performed various physical actions at work and he overstated the extent to which she performed such actions as walking, pushing, and pulling.

In an October 28, 2015 report, Dr. Bender, an attending physician, diagnosed bilateral plantar fibromatosis and left foot idiopathic peripheral neuropathy and discussed diagnostic testing results he obtained on October 21, 2015. He noted that appellant “has sustained an aggravation to a preexisting condition of plantar fasciitis due to repetitive walking and standing within the restrictions of her [four-hour] modified job offer.” In a December 12, 2016 report, Dr. Bender indicated that, based on his review of her job duties, the physical examination findings he obtained, and a review of the records, she sustained an occupational work injury which was reported as occurring on April 2, 2014. He noted that appellant’s prolonged and repetitive job duties of standing, walking, climbing, driving, bending, and stooping aggravated the preexisting conditions in her ankles and feet. The Board notes that Dr. Bender did not provide adequate medical rationale in support of his opinion on causal relationship. Dr. Bender did not discuss the findings upon physical examination in any detail or explain how the medical findings of record, including the diagnostic testing he obtained, supported his opinion that appellant’s feet/ankle conditions were work related.¹⁶ He did not discuss the extent to which appellant performed the various work duties he mentioned. In addition, Dr. Bender’s opinion is not based on a complete factual basis because he identified work duties, including driving, climbing, and stooping, which were not established as being performed by appellant around the time she filed the present claim.

In his December 12, 2016 report, Dr. Bender felt that it was pertinent to note that appellant had lumbar spine issues and that it was known that there is a causal relationship between lumbar spine and ankle/foot conditions. He indicated that her lower extremity radicular symptoms could be exacerbated from her low back condition. However, Dr. Bender did not provide any further explanation of this ostensible medical process and its relationship to work factors, and it must be considered to constitute a speculative medical opinion of limited probative value. The Board has held that an opinion which is speculative is of limited probative value regarding the issue of causal relationship.¹⁷

For these reasons, appellant did not establish an occupational disease related to her work duties.

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.

¹⁵ See generally *Melvina Jackson*, 38 ECAB 443, 447-52 (1987) (finding that a report’s lack of physical examination findings does not necessarily render it incompetent as medical evidence, but may lessen its probative value).

¹⁶ Dr. Bender did not provide any clarification of his statement that appellant’s injury was reported as occurring on April 2, 2014, rather than over an extended period.

¹⁷ See *Leonard J. O’Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her claimed bilateral foot/ankle condition was causally related to accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 3, 2017
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