



## **FACTUAL HISTORY**

On February 26, 2014 appellant, then a 43-year-old carrier technician, filed an occupational disease claim (Form CA-2) alleging that on January 2, 2004 he first became aware of his bilateral plantar fasciitis and flat feet conditions. However, it was not until September 1, 2007 that he became aware that the walking required by his job aggravated these conditions. Appellant stopped work on January 23, 2014.

In a narrative statement dated January 23, 2014, appellant attributed his condition to walking 8 to 15 miles per day as part of his job, in rough weather conditions, and terrain. He related that the pain was bearable in the beginning, but became unbearable the longer he performed his job. Appellant also stated that he tried different orthotics, which masked his foot pain.

By correspondence dated March 27, 2014, OWCP informed appellant that the evidence of record was insufficient to support his claim. It advised appellant as to the medical and factual evidence required and afforded him 30 days to submit this evidence.

In response to OWCP's request, additional evidence was received.

Appellant submitted progress notes covering the period January 2, 2004 to December 16, 2013 regarding treatment for problems with his feet. During this period his treating podiatrists, Dr. Viseth J. Lieu, Dr. Edward Chen, and Dr. Christopher Japur reported examination findings and the care provided to appellant. Appellant's history of flat feet was noted, and findings were made of multiple callouses on the bottoms of both feet, left ankle pain, bilateral pes planus, plantar fasciotomy, heel pain, bilateral posterior heel callouses, left heel hyperkeratotic plantar lesion, and left foot plantar fasciitis. The progress notes indicated that appellant was seen monthly for callous trimming. Appellant related in progress notes in 2007 and 2008 that walking was required as part of his daily employment duties. He also related that he had experienced painful callouses on his feet for a long time.

On May 16, 2014 OWCP received an undated report from Dr. Chen. After reviewing x-ray interpretations of appellant's feet, Dr. Chen diagnosed mild bilateral pes plan deformity. He recommended that appellant limit his walking as this activity aggravated his pain and foot problems.

By decision dated May 14, 2014 and finalized on May 19, 2014, OWCP denied appellant's claim. It found the medical evidence failed to establish causal relationship between the diagnosed condition and the established employment factor.

In a letter dated May 27, 2014, counsel requested a telephonic hearing before an OWCP hearing representative.

In a May 29, 2014 report, Dr. Michael Foreman, a family physician, diagnosed bilateral pes planus and bilateral plantar fascial fibromatosis and provided examination. He attributed the diagnosed conditions to appellant's employment as a mail carrier. In his May 29, 2014 report, Dr. Foreman explained that appellant's foot condition had been managed prior to his current

employment and that the increased weight bearing required by his job exacerbated his pain and caused the development of plantar fasciitis.

By decision dated November 21, 2014, a hearing representative found the case was not in posture for a decision. He vacated the May 14, 2014 decision and remanded the case to OWCP for further development of the record.

On January 28, 2015 OWCP referred appellant for a second opinion evaluation with Dr. Norman Mindrebo, Board-certified in sports medicine, orthopedic surgery, and orthopedic sports medicine.

In a report dated February 12, 2015, Dr. Mindrebo, based upon a statement of accepted facts, review of the medical evidence, appellant's employment and medical histories, and physical examination, diagnosed bilateral pes planus deformity. A physical examination revealed no ability to invert or evert the left foot while the right foot had passive eversion and inversion within normal limits. Dr. Mindrebo also reported that due to pain appellant was unable to stand on his heels or toes and he walked with a flat-footed gait pattern. He opined that appellant's condition was not employment related and that the left foot would improve with removal of the MBA implant. In an attached work capacity evaluation (Form OWCP-5c), he noted there were no accepted work conditions and checked "yes" to the question of whether appellant was capable of performing his usual work.

By decision dated March 20, 2015, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish plantar fasciitis caused or aggravated by his employment. It found the weight of the evidence rested with the opinion of Dr. Mindrebo, OWCP's referral physician, who concluded that appellant's foot condition was unrelated to his employment.

In a letter dated March 25, 2015, counsel requested a telephonic hearing before an OWCP hearing representative, which was held on October 14, 2015.

By decision dated December 22, 2015, the hearing representative set aside the denial of appellant's claim and remanded for referral to an impartial medical examiner. She found there was an unresolved conflict in the medical opinion evidence between Dr. Mindrebo and Dr. Foreman on the issue of whether appellant's foot conditions had been aggravated by his employment.

On February 8, 2016 appellant was referred to Dr. Stephen F. Weiss, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Drs. Mindrebo and Foreman on the issue of whether appellant's foot conditions had been caused or aggravated by his employment.

In a March 10, 2016 report, Dr. Weiss reviewed the medical evidence, statement of accepted facts, and provided results on physical examination. He diagnosed bilateral pes planus deformity, bilateral plantar fasciitis, and status/post left MBA implant. Appellant's physical examination revealed a markedly antalgic left side gait, painful heel walk, inability to walk on borders of feet or toes, bilateral pes planovalgus deformity, and tenderness on palpation of both plantar facial origins. Dr. Weiss opined that the diagnosed conditions had not been caused or

aggravated by employment factors. He explained that plantar fasciitis was commonly associated with being overweight and the aging process and that the bilateral pes planus deformity was a personal condition. Dr. Weiss opined that appellant's duties as a postal carrier neither caused nor aggravated the bilateral plantar fasciitis or bilateral pes planus deformity. In support of this conclusion, he referred to the American Medical Association, *Guides to the Evaluation of Disease and Injury Causation* (2<sup>nd</sup> ed.), which he attached.

By decision dated April 15, 2016, OWCP denied appellant's claim as it found the medical evidence failed to establish that his bilateral plantar fasciitis or bilateral pes planus deformity had been caused or aggravated by his federal employment duties. In support of this determination, it relied upon the report from Dr. Weiss, the impartial medical examiner.

In a letter dated April 22, 2016, counsel requested a telephonic hearing before an OWCP hearing representative, which was held on December 14, 2016.

By decision dated February 2, 2017, the hearing representative affirmed the April 15, 2016 decision denying appellant's claim. She found the weight of the medical opinion evidence rested with the opinion of the impartial medical examiner, Dr. Weiss, who had concluded that the diagnosed conditions were unrelated to appellant's federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while 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.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, 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.<sup>6</sup>

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>7</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>8</sup> 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.<sup>9</sup>

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>10</sup> When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.<sup>11</sup>

### ANALYSIS

Subsequently, an OWCP hearing representative found a conflict in the medical opinion evidence between appellant's physician, Dr. Foreman, and the second opinion physician, Dr. Mindrebo, regarding whether appellant's employment duties caused or aggravated his foot conditions. In order to resolve the conflict, OWCP referred appellant to Dr. Weiss for an impartial medical examination. The Board finds that the March 10, 2016 report of Dr. Weiss is insufficient to resolve the conflict in the medical evidence on the issue of whether appellant's employment factors caused or aggravated his foot conditions. Accordingly, the Board finds that this case is not in posture for a decision.

Dr. Weiss detailed the medical records he reviewed and provided findings upon examination. He diagnosed bilateral pes planus deformity, bilateral plantar fasciitis, and status/post left MBA implant. Although Dr. Weiss related that he did not believe appellant's foot conditions had been aggravated in any way by appellant's employment duties, he provided insufficient rationale for that opinion. He opined only that plantar fasciitis was commonly associated with obesity and aging and that the bilateral pes planus deformity was a personal condition. The only rationale Dr. Weiss provided to support his opinion was an excerpt from a medical journal entitled, *Guides to the Evaluation of Disease and Injury Causation* (2d ed.). The Board has held that medical texts and excerpts from publications are for general application and are not determinative of whether the specific condition claimed is related to the particular

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<sup>7</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>8</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>9</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> 5 U.S.C. § 8123(a). See *S.R.*, Docket No. 09-2332 (issued August 16, 2010); *Y.A.*, 59 ECAB 701 (2008); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

<sup>11</sup> *A.R.*, Docket No. 09-1566 (issued June 2, 2010); *M.S.*, 58 ECAB 328 (2007); *Bryan O. Crane*, 56 ECAB 713 (2005).

employment factors alleged by the employee.<sup>12</sup> Dr. Weiss failed to explain the significance of the guides' general principles to appellant's specific situation.<sup>13</sup>

The opinion of a referee physician or impartial medical specialist is given special weight only when the physician's report is sufficiently rationalized and based upon a proper factual background.<sup>14</sup> Dr. Weiss did not explain what affect, if any, appellant's lengthy employment history, which required significant walking, would have had on his foot conditions. When the report lacks medical reasoning to support conclusory statements about the claimant's condition, it is insufficient to resolve a conflict in the medical evidence, and OWCP cannot use such a report to justify terminating benefits.<sup>15</sup> Because Dr. Weiss' report is of diminished probative value, it cannot carry the special weight of the medical evidence and is insufficient to resolve the conflict.

As OWCP referred appellant to Dr. Weiss for an impartial medical examination, it has a duty to obtain a report sufficient to resolve the issues raised and the questions posed to the specialist.<sup>16</sup> The case will be remanded to OWCP for further development of the medical evidence and a supplemental opinion from Dr. Weiss. After such further development as OWCP deems necessary, an appropriate decision should be issued regarding this matter.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

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<sup>12</sup> *C.B.*, Docket No. 16-1713 (issued April 21, 2017); *N.B.*, Docket No. 14-1702 (issued December 29, 2014); *S.A.*, Docket No. 13-1551 (issued December 17, 2013); *Gloria J. McPherson*, 51 ECAB 441 (2000); *William C. Bush*, 40 ECAB 1064 (1989).

<sup>13</sup> *See C.B., id.; J.R.*, Docket No. 12-1639 (issued January 22, 2013) (finding that an impartial medical examination report, which referred to the A.M.A., *Guides to the Evaluation of Disease and Injury Causation*, lacked sufficient rationale to establish that a claimant's bilateral carpal tunnel syndrome had no relation to his employment and was insufficient to resolve the conflict).

<sup>14</sup> *See M.P.*, Docket No. 16-0551 (issued May 19, 2017).

<sup>15</sup> *A.R.*, Docket No. 12-443 (issued October 9, 2012).

<sup>16</sup> *Guiseppe Aversa*, 55 ECAB 164 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 2, 2017 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: October 23, 2017  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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