

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

S.S., Appellant)	
)	
and)	Docket No. 17-1256
)	Issued: December 13, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Warren, OH, Employer)	
)	

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 19, 2017 appellant, through counsel, filed a timely appeal from a March 27, 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 in this case.

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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an aggravation of her feet conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On February 27, 2014 appellant then a 59-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed an aggravation of bunions and hammertoes as a result of performing repetitive duties required by her job. She first became aware of her condition and realized its relationship to her federal employment on August 26, 2010. Appellant retired on June 29, 2012.³

Appellant submitted an attending physician's report from Dr. James LaPolla, Jr., a podiatrist, dated March 27, 2014, who noted that appellant had a history of bunions of both feet. Dr. LaPolla diagnosed the presence of a bunion and checked a box marked "yes," indicating that appellant's condition was caused or aggravated by her federal employment. He also noted that appellant's injury was "due to inappropriate footwear, friction caused diagnoses." Dr. LaPolla noted that appellant underwent surgery on January 13, 2012 and was disabled from work for the period January 7 to June 27, 2011.

By development letter dated July 25, 2014, OWCP advised appellant of the type of evidence needed to establish her claim, particularly requesting that she submit a physician's reasoned opinion addressing the relationship between her claimed condition and specific employment factors. It provided appellant with a questionnaire for her completion to substantiate the factual elements of her claim and afforded her 30 days to submit the requested information.

By decision dated November 7, 2014, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that her claim was timely filed in accordance with 5 U.S.C. § 8122. It found that appellant first became aware of her condition and its relationship to employment factors on August 26, 2010. OWCP advised that appellant did not file her claim until February 27, 2014, which was more than three years after August 26, 2010. It further noted that there was no evidence that appellant's supervisor had knowledge of an employment-related injury within 30 days.

On November 14, 2014 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held on June 1, 2015.

Appellant was treated in follow up with Dr. LaPolla from April 1 to May 2, 2011 after hammertoe surgery. Dr. LaPolla noted that there was no sign of infection, but some contracture. Other reports dated May 16 to October 20, 2011 noted that appellant continued to improve, she was full weight bearing, and had decreased swelling of her foot. Dr. LaPolla noted findings of mild hammertoes of the 2, 3, 4, and 5 toes of the left foot with adducted deformity of the hallux. X-rays revealed the osteotomy to be solid with no evidence of nonunions. He diagnosed capsulitis,

³ On March 15, 1997 appellant filed an occupational disease claim (Form CA-2), assigned OWCP File No. xxxxxx878. That claim is not currently before the Board on appeal.

tendinitis of the left foot, bunion, and hammertoe, and recommended a second toe tenotomy. On January 13, 2012 Dr. LaPolla performed an osteotomy with screw fixation, left proximal phalanx, and open tenotomy and capsulotomy of the second metatarsophalangeal joint of the left foot. He diagnosed hammertoe, second toe of the left foot, and hallux abduct valgus of the left foot.

Dr. LaPolla treated appellant postoperatively from January 19 to March 29, 2012, and noted that she was progressing well, her toe was in good alignment and the tenotomy was successful. He diagnosed capsulitis/tendinitis of the foot, bunion, and hammertoe. In a report dated February 19, 2012, Dr. LaPolla noted that appellant's initial claim was filed in 2000 and OWCP authorized bunionectomy procedures as causally related to her occupation as a mail carrier. He indicated that appellant's bunion pain returned due to her continued employment as a mail carrier. Dr. LaPolla noted that appellant returned to work at the employing establishment with "constant up and down in her mail truck and carrying the bag," which aggravated her bunion deformity. X-rays revealed that the bunionectomy created a short first metatarsal, which was causing foot pain. Dr. LaPolla noted iatrogenic changes in appellant's joint, in addition to the requirements of her job, caused her joint to be aggravated. He opined that the constant and chronic irritation to her foot for the prior 12 years caused her problems and she required additional surgery. In an addendum report dated October 24, 2013, Dr. LaPolla opined that appellant sustained work-related bunions of the bilateral feet because her footwear was not designed to withstand her job duties. He further noted that appellant had painful friction and aggravation of her toes on both feet against the inappropriate footwear, which resulted in bunions.

Dr. LaPolla reexamined appellant on August 5, 2014 for bunion and hammertoes of the right foot. He noted appellant's condition started while she was working as a mail carrier. Dr. LaPolla noted findings of adduction of the hallux onto the second toe, deviation of the second toe due to contractures, pain with palpation, and range of motion. X-rays revealed that the second and third metatarsals were long in comparison to the first metatarsal, which caused the deviation of the digits. Dr. LaPolla diagnosed capsulitis/tendinitis of the foot, hallux valgus, and hammertoe, and recommended surgery.

By decision dated July 21, 2015, an OWCP hearing representative affirmed as modified the decision dated November 7, 2014. She noted that appellant had filed a new occupational disease claim on February 27, 2014, within three years of the last date she was exposed to her letter carrier duties when she retired in June 2012. Therefore, her claim was timely filed. However, appellant's claim remained denied because she failed to provide sufficient factual evidence describing the work factors believed to have caused the onset of her foot problems.

On December 14, 2015 appellant, through counsel, requested reconsideration.

In an October 28, 2015 narrative statement, appellant reported it was difficult to find shoes that were wide enough to fit around her bunion. She further noted that her right foot would take the brunt of the impact when she exited the right side of her mail truck. Appellant reported delivering approximately 400 stops a day, she exited her truck from 125 to 150 times a day, and loaded trays of mail and packages five to six days a week.

Appellant submitted a November 9, 2015 report from Dr. LaPolla who treated her on October 29, 2015 and noted that there were no changes to appellant's work-related injury. She elected to have surgery on January 8, 2016.

By decision dated March 27, 2017, OWCP modified the July 21, 2015 decision, finding that appellant established the factual elements of her claim. However, the claim remained denied because the medical evidence of record was insufficient to establish her diagnosed feet conditions were caused or aggravated by her accepted work factors.

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 that he or she sustained an injury in the performance of duty, the employee 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. Appellant must also establish that such event, incident, or exposure caused an injury.⁴

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁵ 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.⁶

The medical evidence required to establish causal relationship is 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.⁷

⁴ 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).

⁵ *S.P.*, 59 ECAB 184, 188 (2007).

⁶ *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁷ *Solomon Polen*, 51 ECAB 341 (2000).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an aggravation of her diagnosed feet conditions causally related to the accepted factors of her federal employment.

Appellant submitted a February 19, 2012 report from Dr. LaPolla who noted that in 2000 appellant underwent bunionectomy procedures. Dr. LaPolla opined that appellant's bunion pain returned due to her continued employment as a mail carrier. He noted that appellant returned to work with "constant up and down in her mail truck and carrying the bag," which caused and aggravated her bunion deformity. Dr. LaPolla noted the iatrogenic changes in her joint and the requirements of her job caused her condition to be aggravated. He opined that the constant and chronic irritation to the area of the bunion over the last 12 years caused her foot condition. The Board finds that, although Dr. LaPolla supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's bunions and factors of her employment.⁸ Dr. LaPolla did not explain the process by which "constant up and down in her mail truck and carrying the bag" would cause the diagnosed conditions and why the conditions would not be the result of nonwork-related conditions like age-related degenerative changes. As the opinion of appellant's physician regarding causal relationship was conclusory and unexplained, it was insufficient to meet appellant's burden of proof. This report is thus insufficient to establish appellant's claim.⁹

In an October 24, 2013 report, Dr. LaPolla opined that appellant developed work-related bunions of both feet because her footwear was not designed to withstand her job duties. He noted that appellant had painful friction and aggravation of her toes on both feet against the footwear resulted in bunions. However, this report does not support that appellant's bilateral feet bunions were work related. Rather, Dr. LaPolla simply attributes appellant's bilateral bunions to improperly designed footwear without explaining how that footwear combined with her employment duties was sufficient to result in the diagnosed conditions.

In reports dated August 5, 2014 and November 9, 2015, Dr. LaPolla treated appellant for bunions and hammertoes of the right foot, which began while she was working as a mail carrier. He diagnosed capsulitis/tendinitis of the foot, hallux valgus, and hammertoe. However, Dr. LaPolla failed to provide a rationalized opinion regarding the causal relationship between appellant's bunions and hammertoes and the factors of employment believed to have caused or

⁸ See *T.M.*, Docket No. 08-0975 (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).

⁹ *J.M.*, 58 ECAB 478 (2007) (where the Board found that appellant did not meet his burden of proof in establishing a work-related right wrist condition where his physician provided only conclusory support for causal relationship. As the opinion of appellant's physician regarding causal relationship was conclusory and unexplained, it was insufficient to meet appellant's burden of proof).

contributed to such condition.¹⁰ Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant submitted an attending physician's report from Dr. LaPolla dated March 27, 2014, who noted that appellant had a history of bunions. Dr. LaPolla diagnosed bunion and checked a box marked "yes," that appellant's condition was caused or aggravated by an employment activity "due to inappropriate footwear, friction caused diagnoses." He noted that appellant underwent surgery on January 13, 2012 and was disabled from January 7 to June 27, 2011. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹¹ In this report, Dr. LaPolla did not provide a rationalized opinion as to why or how appellant's employment duties of walking while delivering mail while wearing inappropriate footwear caused or contributed to a diagnosed medical condition.

Other reports from Dr. LaPolla dated April 1 to October 20, 2011 noted that appellant was status post hammertoe surgery. Dr. LaPolla diagnosed capsulitis, tendinitis of the foot, bunion, and hammertoe. Similarly, in reports dated January 13 to March 29, 2012, he noted performing additional left foot surgery and diagnosed capsulitis/tendinitis of the foot, bunion, and hammertoe. However, Dr. LaPolla's notes are insufficient to establish the claim as he did not provide a history of injury¹² or specifically address whether appellant's employment factors were sufficient to have caused or aggravated a diagnosed medical condition.¹³

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated, or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.¹⁴ Appellant failed to submit such evidence and OWCP therefore properly denied appellant's claim for compensation.

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.

¹⁰ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹¹ *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006).

¹² *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

¹³ *A.D.*, 58 ECAB 149 (2006); Docket No. 06-1183 (issued November 14, 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).

¹⁴ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an aggravation of bilateral bunions and hammertoes causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2018
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