

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

V.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Diego, CA, Employer**

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**Docket No. 17-1926
Issued: February 20, 2018**

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 September 12, 2017 appellant, through counsel, filed a timely appeal from a May 15, 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish bilateral hand and feet arthritic conditions causally related to the 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 February 9, 2017 appellant, then a 53-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that the arthritis in her hands and feet had been aggravated by her federal employment duties. She stopped work on January 18, 2017.

A December 13, 2016 x-ray interpretation of appellant's feet revealed severe right foot first metatarsophalangeal joint (MTP) osteoarthritis, some second and third MTP osteoarthritic changes, right proximal interphalangeal joint erosive osteoarthritis, and some left foot first MTP space narrowing.

In a January 13, 2017 duty status report (Form CA-17), Dr. James Italiano, a treating Board-certified family practitioner, diagnosed severe pain due to erosive bilateral hand and foot osteoarthritis. He opined that appellant's work duties of operating her mail vehicle and repetitive use of hands and wrists with handling mail aggravated her conditions. Work restrictions were provided.

In a January 16, 2017 report, Dr. Italiano diagnosed debilitating arthritis. He noted appellant's condition has been present for over 10 years. Dr. Italiano explained that her arthritic condition was erosive in nature and aggravated by repetitive overuse. He recommended that appellant limit her work to an eight-hour shift with restrictions. The restrictions included no lifting over 20 pounds lifting, no running, jumping, jogging, kneeling, or squatting, and limited grabbing and gripping.

In a February 8, 2017 report, Dr. Jeffrey Schiffman, a Board-certified orthopedic surgeon, detailed appellant's employment and medical histories, and noted that appellant had experienced increasing complaints of hand and foot pain for the past five years. Appellant's physical examination revealed swollen finger joints with chronic soft tissue changes, severe right foot arthritis, and no significant left foot arthritis. Dr. Schiffman diagnosed erosive arthritis in the fingers, bilateral foot arthritis, and bilateral hand arthritis.

Dr. Schiffman, in a February 8, 2017 Form CA-17, detailed appellant's work restrictions. Diagnoses included bilateral hand and foot arthritis. Dr. Schiffman again opined that appellant sustained injury due to her work duties of entering and exiting the mail vehicle, frequent standing and walking long periods of time, and repetitive use of hands and wrists while handling mail.

In a February 9, 2017 statement, appellant related that she first became aware of her right hand stiffness on May 1, 2011. She noted that her work entailed repetitive work which caused her hands and feet to hurt. The repetitive work included grasping large piles of mail at least 60 times per day, jumping in and out of a postal vehicle, grasping slippery mail, and walking up long driveways. Appellant related her belief that her conditions had been aggravated by her repetitive work duties.

By development letter dated February 24, 2017, OWCP informed appellant that the evidence of record was insufficient to support her claim. It advised her regarding the medical and factual evidence needed to establish her claim. Appellant was afforded 30 days to provide the requested evidence.

In reports dated February 22 and March 13, 2017, Dr. Schiffman noted appellant was evaluated that day for bilateral hand arthritis. Physical examination findings remained unchanged. In the March 13, 2017 narrative report, Dr. Schiffman detailed appellant's employment and medical histories. He described the duties appellant performed as a mail carrier for the past five years. Dr. Schiffman reviewed x-ray interpretations which showed bilateral hand arthritis with finger erosions and bilateral first metatarsophalangeal. He opined that her repetitive work with her hands aggravated her bilateral hand arthritis and that her constant walking aggravated her bilateral foot arthritis.

By decision dated May 15, 2017, OWCP denied appellant's claim as it found the medical evidence of record insufficient to establish causal relationship between the diagnosed medical conditions and the accepted employment factors, which include repetitive grasping, jumping in and out of a mail vehicle, handling of mail, and frequent standing and walking long periods of time.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 filed within the applicable time limitation, that an 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.⁴ 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.⁵

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.⁶

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

³ *Id.*

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

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

⁶ *D.U.*, Docket No. 10-0144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

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

compensable employment factors.⁸ 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.⁹

ANALYSIS

The Board finds that appellant failed to meet her burden of proof to establish that the accepted factors of her federal employment caused or aggravated her diagnosed medical conditions. Appellant identified the factors of employment that she believed caused her conditions, including repetitive grasping, operating her mail vehicle, handling of mail, and frequent standing and walking long periods of time. OWCP accepted these factors as factual. However, in order to establish a claim for an employment-related injury, she must also submit rationalized medical evidence which explains how or why her medical conditions were caused or aggravated by the accepted employment factors.¹⁰

Drs. Italiano and Schiffman both opined that appellant's bilateral hand and foot arthritis had been aggravated by her repetitive job duties. In a January 16, 2017 report and Form CA-17, Dr. Italiano diagnosed erosive arthritis, which he believed had been aggravated by her repetitive work duties or repetitive overuse. On February 8 and 22 and March 13, 2017 Dr. Schiffman diagnosed erosive finger arthritis, bilateral foot arthritis, and bilateral hand arthritis. He opined that the diagnosed conditions had been aggravated by appellant's work duties of jumping in and out of a mail vehicle, repetitive handling of mail, and frequent standing and walking. However, both physicians offered only conclusory opinions. The Board has previously held that mere conclusory statements, not fortified by explanation, are insufficient to establish causal relationship between employment factors and diagnosed conditions.¹¹ Without further explaining how physiologically the movements involved in appellant's employment duties caused or contributed to the diagnosed conditions, these opinions on causal relationship are of limited probative value.¹²

Appellant also submitted a December 13, 2016 x-ray in support of her claim. The x-ray report is insufficient to establish her claim as it is merely a diagnostic report and contains no opinion as to the cause of the medical conditions identified on x-ray.¹³

As appellant has not submitted any rationalized medical evidence to support her allegation that her diagnosed arthritic conditions of the hands and feet were causally related to the accepted employment factors, she failed to meet her burden of proof.

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

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

¹⁰ *See V.U.*, Docket No. 17-0860 (issued July 26, 2017); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

¹¹ *N.M.*, Docket No. 010-0283 (issued August 19, 2010).

¹² *See S.C.*, Docket No. 17-0103 (issued May 2, 2017).

¹³ *T.D.*, Docket No. 17-0649 (filed June 16, 2017).

On appeal counsel blanketly contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds the attorney's arguments are without substance and are not substantiated.

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

Appellant has not met her burden of proof to establish bilateral hand and feet arthritic conditions causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 15, 2017 is affirmed.

Issued: February 20, 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