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

| | | |
|---|---|---|
| **A.T., Appellant** | ) | |
| **and** | ) | **Docket No. 17-1768** |
| | ) | **Issued: January 29, 2018** |
| **DEPARTMENT OF THE NAVY, BUREAU OF MEDICINE & SURGERY, San Diego, CA, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*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 August 14, 2017 appellant filed a timely appeal from a June 5, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.[2]

### ***ISSUE***

The issue is whether appellant met his burden of proof to establish a bilateral great toe condition causally related to the accepted factors of his federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant submitted evidence on appeal that was not part of the record when OWCP issued its June 5, 2017 decision. The Board's jurisdiction is limited to the evidence that was in the case record at the time of OWCP's final decision. 20 C.F.R. § 501.2(c)(1). Therefore, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

## ***FACTUAL HISTORY***

On March 7, 2017 appellant, then a 49-year-old quality assurance specialist, filed an occupational disease claim (Form CA-2) alleging the development of bilateral hallux limitus, which he attributed to extensive walking and climbing stairs in the performance of duty. He first became aware of his condition and its relationship to his federal employment on October 22, 2016. Appellant advised that he was scheduled for surgery on March 15, 2017. The employing establishment indicated that he last worked on December 29, 2016.

In a March 7, 2017 letter, the employing establishment controverted appellant's claim. It noted that he had not submitted any medical documentation is support of his claimed bilateral great toe arthritic condition (hallux limitus). The employing establishment reported that appellant had been on Family Medical Leave Act (FMLA) due to numerous medical issues. It also noted that he had been on light duty for over a year due to a back condition and surgery. This was supported by a March 6, 2017 statement from appellant's supervisor.

In a letter dated March 17, 2017, OWCP requested additional factual and medical evidence in support of appellant's occupational disease claim. It attached a development questionnaire and afforded him 30 days for a response.

Appellant responded to OWCP's development questionnaire on March 21, 2017. He indicated that, while working, he was constantly walking and climbing stairs to inspect buildings and clinics. In October 2016 appellant started to use a cane to walk as he was denied reasonable accommodations. He indicated that he had no activities outside his federal employment due to chronic pain in his neck, back, feet, hands, and shoulders, for which he had several metal implants. A copy of appellant's October 26, 2016 reasonable accommodation request was provided.

With respect to appellant's foot condition, several reports from Dr. Alan K. Jones, a podiatrist, were received. In May 19, and June 4 and 25, 2014 reports, Dr. Jones noted appellant's progress following left bunionectomy with decompression osteotomy. Appellant was noted to be recovering well from the bunionectomy with no new complaints.

In an August 7, 2014 report, Dr. Jones provided an assessment of hallux limitus left lower extremity with pain. He noted that the x-rays showed some degenerative changes associated with the great toe joint. Alignment was excellent and appellant had good healing from the osteotomy. Appellant was immobilized in a fracture walker.

In a September 11, 2014 report, Dr. Jones noted that appellant had continuing pain at the surgery site on the left great toe and had pain associated with standing and walking, with some swelling at times. Examination revealed mild discomfort with active and passive range of motion of the left great toe joint with mild crepitus, but no erythema edema. An assessment of hallux limitus and status post bunionectomy was provided. Appellant received an injection to his great left toe joint.

In an October 24, 2014 report, Dr. Jones noted that the injections had been effective in reducing appellant's symptoms of hallux limitus. While appellant had some crepitus noted with

limited range of motion of the left great toe, the pain was not reproducible. X-rays continued to show degeneration of the first metatarsophalangeal joint, especially on the distal aspect of the metatarsal.

In a March 7, 2017 report, Dr. Jones continued to assess hallux limitus left lower extremity. Appellant was noted to have significant hallux limitus on the left lower extremity with limitation of motion and pain on forced dorsiflexion. X-ray examination showed significant degeneration of the great toe joint on the left lower extremity with no other significant bony pathology, subluxations, or dislocations noted. Appellant agreed to proceed with a Keller-type bunionectomy with arthroplasty of the left great toe joint.

OWCP also received two May 23, 2017 medical excuse forms from Dr. Jones who advised that appellant was excused from work beginning May 2, 2017, and that he would be able to resume work without limitations, effective June 1, 2017.

By decision dated June 5, 2017, OWCP denied appellant's occupational disease claim. It found that the medical evidence of record failed to establish causal relationship between his diagnosed condition (hallux limitus) and factors of his federal employment.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, 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, that an injury was sustained 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.[4]

OWCP's regulations define an occupational disease as a condition produced by the work environment over a period longer than a single workday or shift.[5] To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[6]

[3] *Supra* note 1.

[4] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[5] 20 C.F.R. § 10.5(q).

[6] *Victor J. Woodhams*, 41 ECAB 345 (1989); *see also J.H.*, Docket No. 17-1643 (issued June 23, 2017).

A medical report is of limited probative value if it is unsupported by medical rationale.[7] Medical rationale includes a physician's detailed opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.[8] The belief of a claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relationship.[9]

## ***ANALYSIS***

The Board finds that appellant has failed to meet his burden of proof to establish that his claimed bilateral great toe condition (hallux limitus) is causally related to factors of his federal employment.

Appellant alleged that he had bilateral hallux limitus. However, the evidence of record establishes only a left-sided hallux limitus condition. Appellant alleged that his employment duties of extensive walking and climbing of stairs caused and/or aggravated his condition. OWCP accepted that the employment activities occurred as alleged, but denied his occupational disease claim for hallux limitus as the medical evidence of record was insufficiently detailed to establish a causal relationship between appellant's diagnosed condition and his employment duties.

In support of his occupational disease claim, appellant submitted medical reports from Dr. Jones. In his reports dated May 19, and June 4 and 25, 2014, Dr. Jones noted appellant's progress following left bunionectomy with decompression osteotomy. These specific reports do not address the claimed condition of bilateral hallux limitus.

In his reports dated August 7, September 11, and October 24, 2014, and March 7, 2017, Dr. Jones diagnosed hallux limitus left lower extremity. He provided examination and x-ray findings. Eventually surgery was recommended, to which appellant consented. However, Dr. Jones did not provide any opinion regarding causal relationship between appellant's diagnosed bilateral hallux limitus and his federal employment. Without an opinion on causal relationship, Dr. Jones' reports are insufficient to meet appellant's burden of proof.[10]

Thus, the Board finds that appellant has not submitted sufficient medical opinion evidence to establish his occupational disease claim.[11]

---

[7] *T.F.*, 58 ECAB 128 (2006).

[8] *A.D.*, 58 ECAB 149 (2006).

[9] *Lourdes Harris*, 45 ECAB 545, 547 (1994).

[10] *D.R.*, Docket No. 16-0528 (issued August 24, 2016).

[11] *See P.M.*, Docket No. 17-1320 (issued October 16, 2017).

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 failed to meet his burden of proof to establish a bilateral great toe condition causally related to his accepted employment exposure.

## ***ORDER***

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

Issued: January 29, 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