

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

I.S., Appellant)	
)	
and)	Docket No. 17-1252
)	Issued: March 15, 2018
U.S. POSTAL SERVICE, FOREST HILL)	
STATIONS, Forest Hills, NY, Employer)	
)	

Appearances:
Thomas S. Harkins, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 18, 2017 appellant, through counsel, filed a timely appeal from a December 30, 2016 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.

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 met his burden of proof to establish that his diagnosed right leg conditions were causally related to the accepted December 24, 2014 employment incident.

On appeal counsel contends that appellant had established that the December 24, 2014 incident occurred as alleged and that it aggravated a preexisting condition.

FACTUAL HISTORY

On January 22, 2015 appellant, then a 60-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 24, 2014 he injured his right leg when a push cart hit him.³ He stopped work on December 26, 2014 and has not returned. The employing establishment controverted the claim.

On January 13, 2015 Dr. Alfred Liefbrig, a treating Board-certified general surgeon, noted that appellant had been under his care, as well as that of Dr. Maurice Klein, a treating Board-certified general surgeon, since December 30, 2014.

In a statement dated January 20, 2015, appellant explained that the incident occurred when he was cleaning his work area and pulled a cart backwards. The cart then struck his left bottom ankle and right leg.

Dr. Klein provided an attending physician's report (Form CA-20) and a duty status report (Form CA-17) dated January 21, 2015. On the Form CA-20 he diagnosed right cellulitis, noted that appellant had history of venous insufficiency, and checked "yes" to the question of whether the diagnosed condition was work related. Dr. Klein noted that appellant injured his right ankle while pushing a cart on December 24, 2014. He opined that appellant was totally disabled on and after December 30, 2014 due to the claimed work injury. In the Form CA-17, Dr. Klein noted an injury history, diagnosis of infected right ankle ulcer, and that appellant was unable to resume his usual work as a letter carrier.

By letter dated January 26, 2015, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him regarding the medical and factual evidence required and afforded him 30 days to provide this information. OWCP attached a claim development questionnaire for appellant to complete.

Dr. Liefbrig, in a February 20, 2015 attending physician's report (Form CA-20) noted that appellant sustained a contusion to the medial malleolar right ankle area on December 24, 2014. He noted preexisting conditions of venous and arterial insufficiency and diabetes. Dr. Liefbrig diagnosed nonhealing medial malleolar right ankle ulcer, diabetes, and venous and arterial insufficiency. He checked a box marked "yes" to the question of whether the diagnosed conditions

³ The record reveals that, under File No. xxxxxx806, OWCP accepted appellant's December 7, 2012 traumatic injury claim for cellulitis of the right foot, an open wound of the right hip/thigh, and an open wound of the right knee, leg, and ankle.

had been caused or aggravated by an employment activity. Dr. Liefbrig found appellant disabled from work commencing December 30, 2014.

In a February 20, 2015 narrative report, Dr. Liefbrig reported that appellant was first seen for his wound on December 30, 2014. During a January 21, 2015 visit, appellant related that the injury occurred when his right ankle was hit by a pushcart. Dr. Liefbrig noted that appellant was seen for a right foot neurotrophic plantar diabetic pressure ulcer and chronic 2.5 centimeter by 2.5 centimeter nonhealing ulcer over the right medial malleolar area due to both arterial and venous insufficiency. He attributed the skin break and contusion to appellant being hit by the pushcart in December. Dr. Liefbrig explained that the pushcart injury caused the skin break, which initiated the ulceration due to appellant's diabetes and his arterial and venous insufficiency conditions.

In a February 23, 2015 duty status report (Form CA-17), Dr. Liefbrig diagnosed ischemic ulcer with diabetes listed as another disabling condition. He reported that on December 24, 2014 appellant's right ankle was struck by a cart he was pulling. Dr. Liefbrig checked a box marked "no" to the question of whether appellant could resume work.

On March 2, 2015 OWCP received a magnetic resonance imaging (MRI) scan of appellant's right ankle dated January 21, 2015, which noted his ulcer history, as well as status postsurgery for a 2001 neuroma. The report found no definitive evidence of osteomyelitis. However, this report did relate findings of chronic plantar fasciitis, moderate degenerative changes of the ankle joint, scarring from a chronic ligamentous injury, and soft tissue medial and lateral swelling.

By decision dated March 5, 2015, OWCP denied appellant's claim as it found he had failed to establish the factual portion of his claim. Specifically, it found that the December 24, 2014 incident did not occur as alleged due to appellant's failure to provide a narrative statement or respond to the questions posed in the development letter.

Following the denial of his claim, OWCP received additional evidence, including CA-17 forms dated January 4 and February 26, 2015, and a statement of certification and response to the questions posed by OWCP signed by appellant on February 26, 2015.

In his February 26, 2015 statement, appellant described defective carts on the workroom floor and alleged that he was required to work under unsafe conditions. He related that he was processing his case mail and that after he had completed casing his mail he pushed the alleged defective cart up to the front of the case. While lifting, pushing, and pulling back the cart, the left tire of the cart hit the left side of his right ankle.

On March 11 and April 1, 2016 appellant filed a claim for a schedule award (Form CA-7). He also checked the box for leave without pay on the claim form without noting any dates.

Dr. Liefbrig, in a March 12, 2015 Form CA-17, diagnosed ankle ulceration and neurotrophic diabetic ulcer. He noted that appellant claimed that while pulling a cart back it ran over his right ankle. Dr. Liefbrig found that appellant was disabled from work and noted appellant was a diabetic.

On March 31, 2015 OWCP received appellant's request for a review of the written record by an OWCP hearing representative.

On April 1, 2015 OWCP received a December 24, 2014 routing slip to management from appellant. Appellant informed his supervisors that he was filing a Form CA-1 as he was injured by a defective cart causing a trauma to his right ankle on December 24, 2014. Appellant submitted a statement describing his employment duties. He related that on October 25, 2014 he injured his right ankle when struck by a relay bag weighing over 35 pounds. Appellant indicated that although his ankle hurt, he continued working. He pointed out that he did not notice a puncture wound "and blood spots on my compression stocking" until after he arrived home.⁴

By decision dated August 13, 2015, an OWCP hearing representative affirmed the March 5, 2015 decision. She found that appellant had failed to establish the factual portion of his claim based on discrepancies in the evidence.

On September 2, 2015 OWCP received an undated prescription note by Dr. Liefbrig indicating that since June 2015 appellant had been under his care for complications from his diabetes. Dr. Liefbrig also indicated that appellant was disabled from work.

On July 18, 2016 Dr. Luis R. Davila-Santini, a treating physician, specializing in vascular surgery, diagnosed chronic osteomyelitis and diabetic foot infection, which he reported appellant developed after his claimed employment injury. He also related that these conditions subsequently led to the development of gangrene. Dr. Davila-Santini noted that he had treated appellant since December 22, 2015. He explained that appellant had an above the knee amputation due to worsening gangrene, which required prolonged rehabilitation and rendered appellant disabled from work.

In a letter dated and received on August 5, 2016, counsel requested reconsideration. He contended that the evidence of record established that the December 24, 2014 incident occurred as alleged. Counsel further argued that appellant established a medical condition causally related to the December 24, 2014 incident and, thus, was entitled to benefits as he had established his claim.

On August 9, 2016 OWCP received appellant's undated statement detailing his work duties, list of doctors and treatment provided, and detailing right ankle work injuries sustained on October 25 and December 24, 2014. With respect to the December 24, 2014 injury, appellant stated that the left tire of the pushcart hit the left side of his right ankle while he was pushing, pulling back, and lifting the cart, which he described as defective. He also stated that he submitted a slip informing his supervisors of his injury around 4:18 p.m. on the date of injury.

By decision dated December 30, 2016, OWCP modified the August 13, 2015 denial of the claim, finding that appellant had submitted sufficient evidence to establish the December 24, 2014 incident occurred as alleged, and that appellant had established that medical conditions were

⁴ There is no evidence of record supporting that appellant filed a claim for the alleged October 25, 2014 employment injury.

diagnosed. It, however, found the evidence of record insufficient to establish causal relationship between the diagnosed conditions and the accepted December 24, 2014 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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.⁶ 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.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁸ First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged.⁹ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.¹⁰

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹¹ 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.¹² 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.¹³

⁵ 5 U.S.C. § 8101 *et seq.*

⁶ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁷ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 6.

⁹ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

¹⁰ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 6.

¹¹ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹² *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹³ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Under FECA, when an employment incident causes an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.¹⁴ When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.¹⁵

ANALYSIS

OWCP initially denied appellant's claim as it found he had not established that an incident occurred as alleged. By decision dated December 30, 2015, it granted appellant's request for reconsideration of the merits of his claim, and modified its prior decision, finding the factual evidence sufficient to establish that the December 24, 2014 work incident occurred as alleged. However, OWCP denied the claim as it found the medical evidence of record insufficient to establish causal relationship between the accepted December 24, 2014 work incident and the diagnosed conditions of nonhealing medial malleolar right ankle ulcer, right ankle cellulitis, and gangrene.

Dr. Liefbrig attributed appellant's skin break and contusion to the pushcart injury. He also diagnosed nonhealing medial malleolar right ankle ulcer and checked a box marked "yes" that the diagnosed condition was causally related to the employment incident. Dr. Klein also diagnosed right ankle cellulitis and checked a box marked "yes" that the diagnosed condition was causally related to the employment incident. The Board has held that when a physician's opinion on causal relationship consists of checking "Yes" to a form question, without more by the way of medical rationale, that opinion has little probative value and is insufficient to establish causal relationship. A claimant's burden of proof includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.¹⁶

Dr. Liefbrig also explained that the push cart injury caused the skin break and contusion, which became ulcerated due to appellant's diabetes and venous and arterial insufficiency conditions. He concluded that the December 24, 2014 push cart injury and appellant's preexisting diabetes and arterial and venous insufficiency led to his right ankle condition. The Board also notes that Dr. Davila-Santini diagnosed chronic osteomyelitis, as well as diabetic foot infection, which he related to appellant's employment incident. Both Dr. Liefbrig and Dr. Davila-Santini, however, stated conclusions, without medical rationale explaining causal relationship. Appellant must submit medical evidence which offers a medically-sound explanation of how the claimed work incident caused or aggravated the claimed condition.¹⁷ A mere conclusion without the necessary rationale explaining how and why the physician believes that the accepted incident resulted in a diagnosed condition is insufficient to meet appellant's burden of proof.¹⁸ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease

¹⁴ *Raymond W. Behrens*, 50 ECAB 221, 222 (1999); *James L. Hearn*, 29 ECAB 278, 287 (1978).

¹⁵ *Id.*

¹⁶ *See I.L.*, Docket No. 16-1668 (issued September 8, 2017).

¹⁷ *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

¹⁸ *C.M.*, Docket No. 17-0596 (June 15, 2017).

or condition was caused or aggravated by an employment incident is sufficient to establish causal relationship.¹⁹ The medical evidence of record fails to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how the push cart hitting appellant's leg would cause or aggravate appellant's diagnosed conditions.²⁰

The record also contains a January 21, 2015 MRI scan of appellant's right ankle, which related findings of chronic plantar fasciitis, and moderate degenerative changes of the ankle joint. The Board has held that diagnostic test reports are of limited probative value as they fail to provide an opinion on the causal relationship between appellant's employment duties and the diagnosed conditions. For this reason, this evidence of record is insufficient to meet his burden of proof.²¹

Appellant has the burden of proof to establish by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, he must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.²²

As the medical evidence of record is insufficient to establish that appellant's diagnosed conditions are causally related to the accepted December 24, 2014 employment incident, he has failed to meet his burden of proof.

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 has not met his burden of proof to establish that his diagnosed right leg conditions were causally related to the accepted December 24, 2014 employment incident.

¹⁹ *M.D.*, Docket No. 17-0430 (issued August 21, 2017).

²⁰ *Id.*

²¹ *See S.G.*, Docket No. 17-1054 (issued September 14, 2017).

²² *G.T.*, 59 ECAB 447 (2008); *Michael S. Mina*, 57 ECAB 379 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 30, 2016 is affirmed.

Issued: March 15, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board