

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

_____)	
A.B., Appellant)	
)	
and)	Docket No. 19-0734
)	Issued: August 22, 2019
U.S. POSTAL SERVICE, NETWORK)	
DISTRIBUTION CENTER, Jersey City, NJ,)	
Employer)	
_____)	

Appearances:
*James D. Muirhead, Esq., for the appellant*¹
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 February 12, 2019 appellant, through counsel, filed a timely appeal from a November 20, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over 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 has met her burden of proof to establish a bilateral foot condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On June 23, 2017 appellant, then a 51-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she developed a bilateral foot condition due to prolonged standing on concrete surfaces while in the performance of duty. She noted that she first became aware of her condition on March 30, 2017 and first realized its relation to her federal employment on May 24, 2017. Appellant did not initially stop work.

In a letter dated June 7, 2017, Dr. John Del Monte, a Board-certified podiatrist, diagnosed plantar calcaneal heel spur and left foot posterior tibial nerve entrapment. He indicated that appellant had failed conservative measures and had decided to undergo corrective foot surgery. Dr. Del Monte opined that her conditions had been exacerbated by her employment, noting that she was a postal worker who spent a majority of her workday standing and walking. He opined that this type of work had caused the spur and nerve entrapment to worsen.

In a June 20, 2017 note, Dr. Del Monte indicated that appellant initially presented on March 30, 2017 complaining of numbness and burning of her bilateral feet, left greater than the right. He noted that she worked as a postal employee and that her employment had contributed to her pain, as she walked and stood on concrete floors that did not offer any shock absorption or cushioning. Dr. Del Monte diagnosed bilateral tarsal tunnel syndrome, which he treated with a nerve blocks on March 30 and May 24, 2017. He indicated that appellant was scheduled for left foot nerve decompression surgery on June 30, 2017 and advised that a similar surgical procedure may be required for the right foot. Dr. Del Monte surmised that, following surgery and a period of recuperation, she would be allowed to return to work without restrictions.

In a development letter dated June 30, 2017, OWCP informed appellant that the evidence of record was insufficient to establish her claim and advised her of the type of medical and factual evidence needed. It afforded her 30 days to submit the requested information.

In a July 16, 2017 supplemental statement, appellant noted that she had not engaged in sports, hobbies, musical instruments, volunteer work, other employment, or recreational activities outside of her federal employment. She stated her belief that her diagnosis of tarsal tunnel syndrome was specific to her work environment.

OWCP also received a May 24, 2017 follow-up report from Dr. Del Monte. Dr. Del Monte examined appellant for complaints of left foot pain, tarsal tunnel syndrome, and plantar heel pain. He noted that these conditions were related to and contributed to by her employment. On examination of appellant's feet Dr. Del Monte observed heel pain, left-sided limping, decreased vibratory sense on the left, and pain on palpation of the posterior tibial nerve and plantar heel. He diagnosed a lesion of the plantar nerve of the left lower limb, a calcaneal spur of the left foot, and an acquired short Achilles tendon of the left ankle. Dr. Del Monte discussed surgical procedures of tarsal tunnel release, plantar fascia release, and gastrocnemius soleus release with appellant.

A June 30, 2017 operative report revealed that Dr. Del Monte performed a left foot gastrocnemius recession, left foot tarsal tunnel release, and left foot plantar fasciotomy.

In a July 5, 2017 postoperative report, Dr. Del Monte opined that appellant's left foot condition was work related and that her pain had been aggravated by the nature of her employment. On examination he noted no signs of infection and intact sutures of her left foot. Dr. Del Monte diagnosed a lesion of the plantar nerve of the left lower limb, a calcaneal spur of the left foot, and an acquired short Achilles tendon of the left ankle.

By decision dated August 10, 2017, OWCP denied appellant's occupational disease claim finding that she had not submitted sufficient medical evidence to establish causal relationship between the accepted factors of her federal employment and her diagnosed feet conditions.

On September 7, 2017 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. With her request she submitted a letter from Dr. Del Monte of even date. Dr. Del Monte noted that appellant was currently under his care for bilateral nerve entrapments, as well as plantar heel spurs. He noted that she had undergone a surgical correction of the left foot on June 30, 2017. Appellant still had right foot pain and was undergoing a course of physical therapy for the left foot following surgery. Dr. Del Monte opined that her podiatric conditions had a direct relationship to her employment. He noted that appellant had worked for many years on a concrete floor and that this type of work surface had a direct correlation to the plantar heel spurs. Dr. Del Monte further noted that her employment contributed to her tarsal tunnel syndrome, opining that, while she had an entrapped nerve, hours of standing had increased the level of pain she suffered. He observed that appellant's podiatric conditions could occur to anyone, but he explained her employment had a direct correlation to her conditions as the work environment with concrete floors, standing in place without leaning, and walking long distances had each contributed to the conditions.

On January 8, 2018 a telephonic hearing was held before an OWCP hearing representative.

By decision dated February 14, 2018, an OWCP hearing representative affirmed the August 10, 2017 decision finding that the evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted factors of her federal employment.

On August 23, 2018 appellant, through counsel, requested reconsideration of the decision dated February 14, 2018. With the request, counsel submitted a July 23, 2018 report from Dr. Del Monte. Dr. Del Monte noted that appellant presented to his office on March 30, 2017 with complaints of pain in her heel and pain in the third interspace of the left foot. Appellant told him that the pain had been present for some time and had been aggravated by her employment as a postal worker, as she stood for her entire workday on a concrete floor with no anti-fatigue mat. She stated that, when she stood for up to eight hours at a time on a concrete surface, she noticed increased pain in the foot and posterior leg. On physical examination, Dr. Del Monte noted pain in the medial plantar tubercle of the left foot, pain on palpation of the third interspace with positive Tinsel's and Valleix signs upon palpation, and moderate pain upon palpation of the tarsal tunnel region. Appellant was released to work in summer 2018 with modifications including different shoe gear, rest periods, and a padded mat for standing. Dr. Del Monte opined that her job was

directly related to her conditions and if modifications did not take place, she may suffer further complications to the bilateral feet.

By decision dated November 20, 2018, OWCP denied modification of the February 14, 2018 decision.

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 timely filed within the applicable time limitation of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 diagnosed condition is causally related to the identified employment factors.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁹ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale that explains the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹⁰

³ *Id.*

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *S.C., id.*; *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹⁰ *Id.*; *Victor J. Woodhams, supra* note 7.

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a bilateral foot condition causally related to the accepted factors of her federal employment.

In support of her claim appellant submitted a series of reports from Dr. Del Monte. In these reports, Dr. Del Monte consistently diagnosed a left plantar calcaneal heel spur, entrapment of the posterior tibial nerve of the left foot, bilateral tarsal tunnel syndrome, a lesion of the plantar nerve of the left lower limb, and an acquired short Achilles tendon of the left ankle.

On May 24, 2017 Dr. Del Monte opined that appellant's left foot pain, tarsal tunnel syndrome, and plantar heel pain were related to and contributed to by appellant's employment. In a June 7, 2017 letter, he opined that her conditions had been exacerbated by her employment, noting that she spent a majority of her workday standing and walking. Dr. Del Monte noted that this type of work had caused the spur and nerve entrapment to worsen. On June 20, 2017 he noted that appellant worked as a postal employee and that her employment had contributed to her pain as she walked and stood on concrete floors that did not offer shock absorption or cushioning. In a postoperative report dated July 5, 2017, Dr. Del Monte opined that her left foot condition was work related and that her pain had been aggravated by the nature of her employment. On September 7, 2017 he opined that appellant's podiatric conditions had a direct relationship to her employment. Dr. Del Monte noted that she had worked for many years on a concrete floor, and that this type of work surface had a direct correlation to the plantar heel spurs. He further noted that appellant's employment contributed to her tarsal tunnel syndrome, stating that, while she had an entrapped nerve, hours of standing had increased the level of pain she suffered. Dr. Del Monte observed that her podiatric conditions could occur to anyone, but he felt that her employment had a direct correlation to her conditions, as the work environment with concrete floors, standing in place without leaning, and walking long distances all contributed to the conditions. On July 23, 2018 he opined that appellant's job was directly related to her conditions and if modifications did not take place, she may suffer further complications to the bilateral feet.

Although Dr. Del Monte consistently opined that appellant's feet conditions were employment related, he did not provide a rationalized opinion explaining how the accepted factors of her federal employment, such as standing and walking continuously on concrete floors, could have caused or aggravated her bilateral foot condition. Generalized statements do not establish causal relationship as they are unsupported by adequate medical rationale explaining the pathophysiologic mechanism by which the accepted employment duties caused, aggravated, or accelerated appellant's bilateral foot conditions.¹¹ The Board has held that the mere fact that her symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between her condition and her employment factors.¹² Thus, the Board finds that Dr. Del Monte's reports are insufficiently rationalized to

¹¹ See *A.P.*, Docket No. 19-0224 (issued July 11, 2019); *K.W.*, Docket No. 10-98 (issued September 10, 2010).

¹² See *C.L.*, Docket No. 16-1078 (issued October 21, 2016); *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

establish that appellant's conditions were either caused or aggravated by the accepted factors of her federal employment.

The June 30, 2017 operative report detailing appellant's left foot gastrocnemius recession, tarsal tunnel release, and a plantar fasciotomy did not contain an opinion on causation. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹³ Consequently, the June 30, 2017 operative report is insufficient to establish appellant's claim.

On appeal, counsel asserts that Dr. Del Monte's opinion was sufficient to establish causal relationship. As noted above, the Board finds that Dr. Del Monte's various reports are insufficient to establish causal relationship.

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 her burden of proof to establish a bilateral foot condition causally related to the accepted factors of her federal employment.

¹³ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 2019
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