

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

A.H., Appellant)	
)	
and)	Docket No. 19-0270
)	Issued: June 25, 2019
U.S. POSTAL SERVICE, LITTLE RIVER)	
BRANCH, Miami, FL, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 19, 2018 appellant filed a timely appeal from a September 14, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 14, 2018 decision, appellant submitted additional evidence both to OWCP and to the Board on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish lumbar spine, bilateral ankle, and bilateral foot conditions causally related to accepted factors of her federal employment.

FACTUAL HISTORY

On November 25, 2017 appellant, then a 50-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that she developed lumbar disc displacement, bilateral ankle, and bilateral foot conditions while performing her federal job duties. She attributed her conditions to continually walking, standing, mounting and dismounting, stooping, squatting, twisting, carrying, and turning about 200 times a day, 5 days a week, and 10 hours a day. Appellant indicated that she first became aware of her claimed conditions on January 13, 2017 and first attributed them to her federal employment on November 22, 2017.

By development letter dated February 20, 2018, OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence from her, and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On March 20, 2018 Dr. Fausto P. Castillo, an internist, diagnosed pain and weakness of the lumbar region as well as bilateral knee and foot pain. He opined that appellant had work-related injuries of the lumbar spine, bilateral knees, and feet.

By decision dated March 26, 2018, OWCP denied appellant's occupational disease claim, finding that she had not established the factual aspect of her claim.

In a January 24, 2017 note, Dr. Castillo addressed appellant's lumbar, feet, and bilateral ankle injuries. He listed her employment duties of bending, stooping, squatting, reaching above the head, carrying, pushing, pulling, mounting, and dismounting continually in the performance of her federal job duties. Dr. Castillo noted that appellant had a prior traumatic injury claim for lumbar injury for which she was currently performing light duty. He opined that, based on his "medically certain rationalized opinion," the relationship between her job duties was one of direct contribution.

On January 11, 2018 Dr. Sandra Garcia-Ortiz, a podiatrist, examined appellant due to pain in her posterior left ankle radiating to the dorsal aspect of the mid-tarsal joint. She diagnosed lumbar disc disorders with radiculopathy, unspecified sprain of the left foot, and causalgia of the left lower limb.

On April 5, 2018 OWCP received appellant's completed factual development questionnaire. Appellant listed injuries to her back, bilateral ankles, and bilateral feet. She described her job duties over the course of her 18-year employment. Appellant indicated that she was required to bend, twist, reach, squat, carry, stand, mount and dismount her vehicle, push, and walk in the performance of her federal job duties.

In a March 15, 2018 report, Dr. Castillo noted that appellant attributed her lumbar spine pain and burning sensation to the ankles and feet to her federal job duties. He found that her

bilateral ankle and foot swelling, pain, tenderness, and limited range of motion (ROM) as well as lumbar weakness, pain, and limited ROM were due to the movements and activities of her job duties. Dr. Castillo listed these duties as occurring on 5 to 6 days of the week and including walking 5 to 10 hours a day, climbing stairs for 2 hours a day, mounting and dismounting from appellant's postal vehicle 300 to 450 times a day, twisting for 8 to 10 hours a day, grasping mail and parcels, casing mail, bending and stooping, pushing and pulling, driving and lifting up to 70 pounds for 18 years prior to her recent light duty. He diagnosed bilateral Achilles tendinitis, lumbar spondylosis with radiculopathy, and osteoarthritis. Dr. Castillo reported that appellant's diagnosed conditions were musculoskeletal conditions where the articular cartilage acted as a shock absorber and cushion within the joint. He noted that, when the cartilage erodes, the affected joint becomes stiff and painful. Dr. Castillo opined that the erosion of joint cartilage was frequently attributed to excessive and repetitive overuse from occupational activities. He concluded that appellant's disease conditions were caused by her listed employment duties.

In a series of notes dated May 21 through July 30, 2018, Dr. Luis E. Grau, a family practitioner, examined appellant due to back pain as well as bilateral foot and ankle pain. He diagnosed radiculopathy and herniated disc at L4-5. Dr. Grau also diagnosed bilateral Achilles tendinitis, bilateral plantar fasciitis, and bilateral tarsalgia.

On June 21, 2018 appellant requested reconsideration of the March 26, 2018 OWCP decision.

In a report dated August 13, 2018, Dr. Grau diagnosed cervical spine foraminal stenosis, connective tissue stenosis of the neural canal of the cervical region, cervical chronic pain, neck stiffness, lumbar spine chronic pain, lumbar radiculopathy, lumbar facet degenerative disorder, herniation of lumbar intervertebral discs, connective tissue stenosis of neural canal lumbar region, subluxation stenosis of intervertebral foramina of lumbar region, intervertebral disc disorder of the lumbar region, post-traumatic headache, right ankle posterior talofibular sprain, right plantar fasciitis, right retrocalcaneal ankle, and foot ganglion deformity.

By decision dated September 14, 2018, OWCP modified its March 26, 2018 decision to find that appellant had submitted sufficient factual evidence to establish her implicated employment duties. However, the claim remained denied as it further found that the medical evidence was insufficiently rationalized to establish causal relationship between her diagnosed conditions and her accepted employment duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 period of FECA,³ 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

³ *T.H.*, Docket No. 18-1585 (issued March 22, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.⁴ 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.⁵

In an occupational disease claim, appellant's burden of proof requires submission of the following: (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 required to establish causal relationship is rationalized medical opinion evidence.⁷ 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.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish lumbar spine, bilateral ankle, and bilateral foot conditions causally related to accepted factors of her federal employment.

In support of her November 25, 2017 occupational disease claim, appellant provided a series of notes and reports dated from January 24, 2017 to March 18, 2018 from Dr. Castillo. Dr. Castillo opined that her diagnosed conditions of bilateral Achilles tendinitis, lumbar spondylosis with radiculopathy, and osteoarthritis were related to her accepted employment duties. He noted appellant's diagnosed conditions involved her musculoskeletal system where the articular cartilage acted as a shock absorber and cushion within the joint. Dr. Castillo opined that the erosion of her joint cartilage was due to excessive and repetitive overuse from her occupational activities. A medical opinion must provide an explanation of how the specific employment factors physiologically caused or aggravated the diagnosed conditions.⁹ Without medical reasoning explaining how the accepted employment activities caused or contributed to the diagnosed conditions, Dr. Castillo's report is insufficient to establish appellant's claim.¹⁰

⁴ *T.H., id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *T.H., id.*; *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).

⁶ *T.H., id.*; *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁷ *T.H., id.*; *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

⁸ *T.H., id.*; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *M.W.*, Docket No. 18-1624 (issued April 3, 2019); *B.H.*, Docket No. 18-1219 (issued January 25, 2019).

¹⁰ *M.W., id.*; *R.T.*, Docket No. 17-2019 (issued August 24, 2018).

On January 11, 2018 Dr. Garcia-Ortiz diagnosed lumbar disc disorders with radiculopathy, unspecified sprain of the left foot, and causalgia of the left lower limb. Appellant also provided a series of notes, dated May 21 through August 13, 2018, from Dr. Grau diagnosing cervical spine foraminal stenosis, connective tissue stenosis of the neural canal of the cervical region, cervical chronic pain, neck stiffness, lumbar spine chronic pain, lumbar radiculopathy, lumbar facet degenerative disorder, herniation of lumbar intervertebral discs, connective tissue stenosis of neural canal lumbar region, spondylosis of intervertebral foramina of lumbar region, intervertebral disc disorder of the lumbar region, post-traumatic headache, right ankle posterior talofibular sprain, right plantar fasciitis, right retrocalcaneal ankle and foot ganglion deformity. Dr. Grau's notes did not offer an opinion on the causal relationship between her diagnosed conditions and her federal employment duties. 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.¹¹

As appellant has not submitted rationalized medical evidence to establish a medical condition causally related to the accepted employment factors, the Board finds that she has not met her burden of proof to establish her claim.

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 lumbar spine, bilateral ankle, and foot conditions causally related to factors of her federal employment.

¹¹ *M.W., id.; S.B.*, Docket No. 18-1296 (issued January 24, 2019).

ORDER

IT IS HEREBY ORDERED THAT the September 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 25, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board