

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

_____)	
T.H., Appellant)	
)	
and)	Docket No. 18-1585
)	Issued: March 22, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Buffalo, NY, Employer)	
_____)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 14, 2018 appellant, through counsel, filed a timely appeal from a July 24, 2018 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 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 his burden of proof to establish that his peripheral polyneuropathy was causally related to, or aggravated by, the accepted factors of his federal employment.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 4, 2015 appellant, then a 58-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he experienced pain and difficulty when walking as a result of repetitively standing, climbing, driving, and walking a minimum of eight hours a day while in the performance of duty. He noted that he first became aware of his claimed condition on October 8, 2013 and realized it resulted from his federal employment duties on April 23, 2015. Appellant did not stop work.

Appellant received medical treatment from Dr. David E. Hoffman, a Board-certified neurologist. In an October 8, 2013 report, Dr. Hoffman indicated that he was treating appellant for paresthesia in both feet. He noted that appellant worked as a mail carrier and reported abnormal neurological examination of appellant's bilateral lower extremities. Dr. Hoffman diagnosed peripheral polyneuropathy and opined that it was aggravated by being on his feet virtually eight hours a day, five days a week." He further reported that walking had been an aggravating factor regarding the symptomatic polyneuropathy.

Dr. Hoffman continued to treat appellant. In reports dated October 13, 2014 to July 7, 2015, he noted that electrodiagnostic testing had confirmed that appellant had a length-dependent, predominantly axonal, sensorimotor polyneuropathy.⁴ Dr. Hoffman clarified that appellant's polyneuropathy was not caused by his employment, but his work duties significantly aggravated symptoms related to this preexisting condition.

In a June 18, 2015 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested information.

Appellant subsequently submitted a copy of the October 8, 2013 EMG/NCV study referred to by Dr. Hoffman, a July 7, 2015 letter from Dr. Hoffman, and a copy of Dr. Hoffman's October 13, 2014 report.

³ Docket No. 17-0091 (issued July 25, 2017).

⁴ An October 8, 2013 electromyography (EMG) and nerve conductive velocity (NCV) study showed abnormal findings and demonstrated evidence of a length-dependent, predominantly axonal sensorimotor polyneuropathy.

By decision dated August 5, 2015, OWCP denied appellant's claim. It accepted as factual his duties as a letter carrier and a diagnosis of peripheral neuropathy, but denied his claim because the medical evidence of record was insufficient to establish that appellant's medical condition had been caused or aggravated by factors of his federal employment.

On September 29, 2015 appellant requested reconsideration and submitted additional medical evidence. In a September 9, 2015 letter, Dr. Hoffman reiterated that walking had not caused appellant's neurological condition, but that prolonged walking was more painful due to his neurological condition. By decision dated December 23, 2015, OWCP denied modification of its August 5, 2015 decision.

On May 23, 2016 appellant, through counsel, requested reconsideration.

Appellant subsequently submitted a January 26, 2016 letter, wherein Dr. Hoffman related that appellant's disability from his neuropathy was significantly contributed to by the imperative of having to be on his feet several hours a day delivering mail. Dr. Hoffman again reiterated, in a June 27, 2016 letter, that the repetitive walking by appellant on his postal route aggravated his preexisting condition, from a symptomatic point of view only.

By decision dated August 19, 2016, OWCP denied modification of its December 23, 2015 decision.

Appellant appealed to the Board. By decision dated July 25, 2017, the Board affirmed the August 19, 2016 decision. The Board held that the medical evidence then of record was insufficient to establish that appellant's federal employment duties had caused or contributed to his diagnosed peripheral polyneuropathy. The Board noted that Dr. Hoffman's reports lacked medical rationale sufficient to explain how appellant's employment duties physiologically caused or contributed to his polyneuropathy condition.

On May 8, 2018 appellant, through counsel, requested reconsideration.

In an April 24, 2018 report, Dr. Neil Allen, Board-certified in internal medicine and neurology, indicated that he reviewed appellant's medical records and contacted him for a statement to determine whether causal relationship existed between appellant's bilateral foot injuries and his work-related trauma. He described that appellant worked as a letter carrier and related appellant's complaints of gradually worsening pain, numbness, and tingling in both his feet. Dr. Allen noted that an October 8, 2013 EMG study of the bilateral lower extremity revealed evidence of sensorimotor polyneuropathy. He opined that appellant's bilateral foot condition had been directly aggravated by the physical demands of his position. Dr. Allen explained that, as a letter carrier, appellant was required to stand and walk for eight or more hours per day and operate a vehicle daily. He referenced *The Merck Manual* (13th Edition, p. 1385), which related that direct pressure and cold temperatures were an "exacerbating [aggravating] factor in polyneuropathy." Dr. Allen explained "that touching an area affected by polyneuropathy with the force equal to one's body weight, hundreds if not thousands of times per day, to walk the route of letter carrier would, logically, aggravate the symptoms related to a polyneuropathy." He opined that appellant's accepted duties in the position of a letter carrier required him to place pressure on his lower extremity thousands of times per day in, at times, frigid conditions and that these exposures led to

the aggravation of his polyneuropathy. Dr. Allen concluded that the daily prolonged standing and walking required on a day-to-day basis by appellant's letter carrier position led to the aggravation of polyneuropathy.

By decision dated July 24, 2018, OWCP denied modification.⁵ It found that Dr. Allen's April 24, 2018 report did not contain a well-rationalized medical opinion explaining how appellant's federal employment aggravated his bilateral lower extremity condition.

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,⁶ 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.⁷ 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.⁸

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.⁹

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.¹⁰ 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

⁵ Although the July 24, 2018 OWCP decision denied modification of the Board's July 25, 2017 decision, OWCP is not authorized to review Board decisions. The decisions and orders of the Board are final as to the subject matter appealed, and such decisions and orders are not subject to review, except by the Board. 20 C.F.R. § 501.6(d). Although the July 25, 2017 Board decision was the last merit decision, OWCP's August 19, 2016 decision is the appropriate subject of possible modification by OWCP

⁶ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

⁸ *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).

⁹ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹⁰ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

relationship between the diagnosed condition and the specific employment factors identified by the employee.¹¹

ANALYSIS

The Board finds that this case is not in posture for decision.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's August 19, 2016 decision because the Board has already considered this evidence in its July 25, 2017 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹²

In support of his May 8, 2018 reconsideration request appellant subsequently submitted an April 24, 2018 report by Dr. Allen who opined that the daily prolonged standing and walking required by the accepted duties, on a day-to-day basis, by appellant's letter carrier position led to the aggravation of polyneuropathy. Dr. Allen noted that his report was prepared to provide a rationalized medical opinion in order to establish whether causal relationship exists between appellant's bilateral foot injuries and work-related trauma sustained on and prior to October 8, 2013. In preparation of the report, he reviewed appellant's medical records and contacted him for a statement regarding his employment duties. Dr. Allen reviewed appellant's medical records and noted that his treating physicians had diagnosed bilateral polyneuropathy, which had been confirmed by electrodiagnostic studies he had also reviewed. He also noted that appellant's medical records were consistent with his physical complaints at the time he prepared his report and that his treating physician, Dr. Hoffman, had also noted that he related that cold temperatures and excessive walking caused an increase in symptomatology. Dr. Allen opined that touching an area affected by polyneuropathy with the force equal to one's body weight, hundreds if not thousands of times per day, to walk the route of letter carrier would aggravate the symptoms related to a polyneuropathy. He explained that appellant's accepted duties in the position of a letter carrier required him to place pressure on his lower extremity thousands of times per day in, at times, frigid conditions and that these exposures led to the aggravation of his polyneuropathy.

While the April 24, 2018 report from Dr. Allen is not completely rationalized, it is consistent in finding that appellant's accepted duties of a letter carrier, which included prolonged standing and walking, often in frigid conditions, were sufficient to have aggravated his preexisting condition of polyneuropathy and now provides an explanation of the process by which the accepted employment duties can aggravate the condition of polyneuropathy. The Board thus finds that the medical opinion of Dr. Allen is based upon a complete factual history and medical background of appellant, is provided with reasonable medical certainty, and provides a sufficient level of medical rationale explaining the nature of the relationship between the diagnosed condition and the accepted employment factors.¹³ The Board further finds that the medical opinion of Dr. Allen is

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² See *K.K.*, Docket No. 17-1061 (issued July 25, 2018). The Board will, therefore, not review the evidence addressed in the prior appeal.

¹³ See *E.C.*, Docket No. 17-1765 (issued January 24, 2018).

accurately premised upon the physical examinations conducted by Dr. Hoffman and that, under the facts as set forth in this case, a physical examination is unnecessary for the limited purpose of providing a physiologic explanation of whether the accepted employment factors were sufficient to have aggravated appellant's diagnosed medical condition.¹⁴ Finally, the evidence of record is supportive of causal relationship and is not contradicted by any substantial medical or factual evidence of record.

It is well established that proceedings under FECA are not adversarial in nature and, while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁵ Thus, while Dr. Allen's report is insufficient to meet appellant's burden of proof to establish this claim, it raises an inference of causal relationship between the accepted factors of employment and the diagnosed condition and is sufficient to require further development of the medical record.¹⁶

On remand OWCP shall develop the claim by referring appellant and the medical evidence of record to an appropriate specialist to obtain a rationalized opinion regarding whether his condition of polyneuropathy has been aggravated by the accepted factors of his federal employment.¹⁷ After such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁴ See *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *Sherry Shreiber*, Docket No. 04-1966 (issued January 24, 2005); *Melvina Jackson*, 38 ECAB 443, 447-52 (1987) (finding that in a situation where the diagnosis is clearly established and the issue is whether factors of employment caused or aggravated the diagnosed condition, a physical examination would add little probative value to a medical opinion on causal relationship.)

¹⁵ See *Phillip L. Barnes*, 55 ECAB 426 (2004); *Virginia Richard (Lionel F. Richard)*, 53 ECAB 430 (2002).

¹⁶ See *W.W.*, Docket No. 15-1130 (issued August 7, 2015); *Phillip L. Barnes*, 55 ECAB 426 (2004); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁷ *M.K.*, Docket No. 17-1140 (issued October 18, 2017).

ORDER

IT IS HEREBY ORDERED THAT the July 24, 2018 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 22, 2019
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