

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

_____)	
J.W., Appellant)	
)	
and)	Docket No. 19-1201
)	Issued: November 8, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Daytona, FL, Employer)	
_____)	

Appearances:
Capp P. Taylor, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 9, 2019 appellant, through counsel, filed a timely appeal from an April 16, 2019 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.

ISSUE

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

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.*

FACTUAL HISTORY

On January 22, 2018 appellant, then a 61-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained diabetic foot ulcerations as a result of walking while in the performance of duty. He indicated that he first became aware of the foot ulcerations and first realized that the condition was caused or aggravated by factors of his federal employment on December 28, 2017.

In a report dated October 10, 2017, Dr. Jeffrey Jackson, a podiatric surgeon, examined appellant for complaints of a left foot wound, noting appellant's history of diabetes mellitus. Appellant told Dr. Jackson that his feet had been getting wet more often due to rain. On examination of the lower extremities, Dr. Jackson noted bilateral diminished sensation, bulla formation on the left foot with an underlying small ulceration, and hammertoe. He diagnosed a nonpressure chronic ulcer of the left foot limited to breakdown of skin and a nonthermal blister of the left foot.

On October 24, 2017 Dr. Jackson noted that appellant's plantar ulcer was doing well, but that a new blister on the side of his left great toe had formed. Appellant stated that a new pair of shoes he wore while working contributed to this condition. On examination Dr. Jackson observed bilateral diminished sensation, ulceration of the plantar aspect of the left foot, and a new bulla formation on the dorsal medial aspect of the left hallux. He diagnosed a blister of the left great toe, a blister of the left foot, a nonpressure chronic ulcer of the left foot limited to breakdown of skin, acquired keratosis palmaris et planteria, and type 2 diabetes mellitus with diabetic neuropathy.

In a report dated October 30, 2017, Dr. Emily Ernst, a podiatric surgeon, noted new pain under the little toe on his left foot. On examination she observed bilateral diminished sensation, a healed lesion on the dorsal medial aspect of the left hallux, an ulcer on the plantar aspect of the left foot, a hyperkeratonic lesion below the first metatarsal head of the right foot and medial aspect of the right hallux, and hammertoe. Dr. Ernst diagnosed a blister of the left great toe, a blister of the left foot, a nonpressure chronic ulcer of the left foot limited to breakdown of skin, acquired keratosis palmaris et planteria, type 2 diabetes mellitus with diabetic neuropathy, and left foot pain.

On December 5, 2017 Dr. Jackson followed up with appellant for evaluation of his left foot and to evaluate a new wound on his right foot. On examination he observed bilateral diminished sensation, an ulcer on the plantar aspect of the left foot, a lesion below the first metatarsal head of the right foot and medial aspect of the right hallux, new bulla formation adjacent to this right foot lesion, and hammertoe. Dr. Jackson diagnosed a nonthermal right foot blister, a contusion of the right foot, a nonpressure chronic ulcer of the left foot limited to breakdown of skin, type 2 diabetes mellitus with diabetic neuropathy, and a nonpressure chronic ulcer of the right foot with fat layer exposed.

In a report dated January 3, 2018, Dr. Ernst noted that appellant had been admitted to inpatient care for a right foot blister and abscess. A magnetic resonance imaging (MRI) scan demonstrated a possible abscess and appellant underwent incision and drainage. On examination Dr. Ernst observed bilateral diminished sensation, hammertoe, and a healed ulceration at the first metatarsal head of the right foot. She diagnosed a stage 3 pressure ulcer, type 2 diabetes mellitus

with diabetic neuropathy, anhidrosis, neuralgia and neuritis, a nonthermal blister of the left foot, and tinea unguium.

On January 8, 2018 Dr. Ernst followed up with appellant for his bilateral foot ulcerations. On examination she observed bilateral diminished sensation, a healed lesion at the dorsal medial aspect of the left hallux, ulceration remaining at the plantar aspect of the left foot, ulceration below the right first metatarsophalangeal (MTP) joint with incision edges macerated and sloughing, and hammertoe. Dr. Ernst diagnosed type 2 diabetes mellitus with foot ulcer, a nonpressure chronic ulcer of the right foot with necrosis of muscle, acquired keratosis palmaris et plantaris, and edema. She cleaned and debrided the ulcerations.

In a report dated January 15, 2018, Dr. Ernst followed up with appellant for his bilateral foot ulcerations. On examination she observed that appellant's left foot ulceration at the plantar aspect and right foot ulceration below the right first MTP joint were still present. Dr. Ernst diagnosed type 2 diabetes with foot ulcer, a nonpressure chronic ulcer of the right foot with necrosis of muscle, acquired keratosis palmaris et plantaris, and edema. She cleaned and debrided the ulcerations.

In an attending physician's statement dated January 24, 2018, Dr. Ernst diagnosed a diabetic ulcer infection. She noted that appellant had sustained multiple wounds to both feet over the past several years and that diabetes had affected the present condition. Dr. Ernst recommended work restrictions of no weight bearing on the right foot, no driving, and no walking. She checked a box indicating that appellant's condition arose out of his employment, explaining that increased distance of walking and standing put excess pressure on his feet, causing the wounds. In an accompanying duty status report of the same date, Dr. Ernst diagnosed large infected ulcers of the bilateral feet, stated that appellant was unable to perform regular work duties, and recommended that he not return to work.

In a development letter dated February 2, 2018, OWCP informed appellant that he had not submitted sufficient factual and medical evidence to establish his claim. It advised him of the type of evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a duty status report dated February 7, 2018, Dr. Ernst diagnosed ulceration of the bilateral feet and continued to advise that appellant should not return to work.

In a Certification of Health Care Provider for Employee's Serious Health Condition (Family and Medical Leave Act) (Form WH-380-E), Dr. Ernst diagnosed bilateral foot ulceration due to increased walking, noting worsening with distance to walk to the parking lot and a direct correlation. She explained that the increased distance appellant had to walk due to limited disabled parking spaces had caused breakdown in previously-healed wounds. Dr. Ernst noted that appellant was diabetic with a long history of open wounds and bone infection. She stated that he had to be accommodated in order to heal from his current infection and wounds.

In a statement dated February 5, 2018, appellant noted that he had been given medical accommodation parking on the north side of the premises of the employing establishment. Later, the accommodation ended, requiring him to walk an additional several hundred yards every day.

Within three weeks, appellant's previously-closed ulceration of the right foot broke open and became infected, requiring hospitalization on December 29, 2017.

OWCP received duty status reports (Form CA-17) from Dr. Ernst dated from February 21 through March 21, 2018 in which she recommended that appellant remain off work.

By decision dated March 22, 2018, OWCP denied appellant's claim, finding that he had not submitted sufficient evidence to establish causal relationship between the accepted employment factors and the diagnosed conditions.

On April 30, 2018 appellant requested reconsideration of the March 22, 2018 decision and submitted additional evidence.

In a letter dated April 23, 2018, Dr. Ernst stated that she had treated appellant for various podiatry-related issues over the past several years. She noted that he had a history of ulcerations on each foot at various times over the years. Appellant had been able to heal from them with proper medical care and rest. Dr. Ernst noted that unfortunately, during the past winter, appellant's increased workload and increased walking distance had made it increasingly difficult to maintain a healthy foot. Appellant attempted to alleviate these issues with parking accommodation and modifying how he worked, but was unsuccessful, especially when he was denied parking accommodation. Dr. Ernst explained that long hours standing sorting mail and delivering mail put increased stress on the tissues of the foot, causing wounds and deformities of the toes. She stated that, due to the increased activity, appellant sustained a large ulceration on his right foot that led to an infection that traveled to the bone. Appellant was hospitalized due to the infection and had to undergo procedures and extensive wound care. It became medically necessary that surgery was again performed to attempt to reconstruct a contracture of a joint, remove a portion of his bone, and then apply a specialized vacuum closure system to avoid amputation of the foot.

By decision dated May 10, 2018, OWCP denied reconsideration of the merits of appellant's claim.

On January 26, 2019 appellant, through counsel, requested reconsideration of OWCP's March 22, 2018 decision.

By letter dated December 17, 2018, Dr. Ernst stated that she had treated appellant for several years with regard to his bilateral diabetic foot ulcers. She explained that a diabetic foot ulcer was an open sore or wound occurring in patients with diabetes and are commonly caused by irritated or wounded feet. Dr. Ernst noted that people like appellant with type 2 diabetes often had a difficult time fighting off infections from ulcers. She explained that her office notes and records had recorded a new blister on the side of appellant's left great toe due to a new pair of shoes used while working, and that appellant's increased workload in the winter of 2017 to 2018 included increased walking distance, long hours of standing, and delivering mail. Dr. Ernst noted that long hours of being on his feet put increased stress on the tissues of the foot, causing wounds and contributing to the difficulty in healing these diabetic foot ulcers. She stated that, due to increased activity, appellant sustained a large ulceration on his right foot that led to an infection, requiring hospitalization and surgery. Dr. Ernst explained that appellant's diabetic condition made him susceptible to foot ulcerations. The extent of time appellant was required to be on his feet with regard to walking, standing, casing, sorting mail, as well as mounting and dismounting from his

vehicle, contributed to the risk of ulceration and infections of the bilateral foot ulcerations. Appellant's poor fitting shoes would have also contributed to the ulcerations, as would age and weight. Dr. Ernst stated that the friction on appellant's wounds performing work duties would contribute or cause the infection to the wounds, as well as the moisture on the feet due to perspiration or surface water entering the shoes. She opined that the infection and exacerbations of appellant's diagnosed bilateral foot ulcerations were caused by these work duties within a reasonable degree of medical podiatric probability.

By decision dated April 16, 2019, OWCP denied modification of the decision dated March 22, 2018.

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) 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 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

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 *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).

rationale that explains the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹⁰

ANALYSIS

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

The record reflects that appellant's employment factors consist of prolonged walking, standing, casing mail, and sorting mail, as well as mounting and dismounting from his vehicle. Therefore, the issue is whether he has submitted sufficient medical evidence to establish that the factors of his federal employment caused or aggravated the diagnosed medical conditions.

In an April 23, 2018 letter, Dr. Ernst stated that she had treated appellant for various podiatry-related issues over the past several years. She noted that, during the past winter, appellant's increased workload and increased walking distance had made it increasingly difficult to maintain a healthy foot. Dr. Ernst explained that long hours standing sorting mail and delivering mail put increased stress on the tissues of the foot, causing wounds and deformities of the toes. She opined that, due to the increased activity, appellant sustained a large ulceration on his right foot that led to an infection that traveled to the bone.

On December 17, 2018 Dr. Ernst explained that her office notes and records had recorded a new blister on the side of appellant's left great toe due to a new pair of shoes used while working, and that appellant's increased workload in the winter of 2017 to 2018 included increased walking distance, long hours of standing, and delivering mail. She noted that long hours of being on his feet put increased stress on the tissues of the foot, causing wounds and contributing to the difficulty in healing these diabetic foot ulcers. Dr. Ernst stated that, due to increased activity, appellant sustained a large ulceration on his right foot that led to an infection, requiring hospitalization and surgery. She explained that appellant's diabetic condition made him susceptible to foot ulcerations. The extent of time appellant was required to be on his feet with regard to walking, standing, casing, sorting mail, and mounting and dismounting from his vehicle, contributed to the risk of ulceration and infections of the bilateral foot ulcerations. Dr. Ernst noted that appellant's poor fitting shoes would have also contributed to the ulcerations, as would age and weight. She also stated that the friction on appellant's wounds performing work duties would contribute or cause the infection to the wounds, as well as the moisture on the feet due to perspiration or surface water entering the shoes. Dr. Ernst opined that the infection and exacerbations of appellant's diagnosed bilateral foot ulcerations were caused by these work duties within a reasonable degree of medical podiatric probability.

The Board finds that, while Dr. Ernst's April 23 and December 17, 2018 letters were not fully rationalized, she explained the physiological process by which the accepted factors of appellant's federal employment caused his diagnosed bilateral lower extremity conditions. Although the medical letters are insufficient to meet appellant's burden of proof to establish his

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

claim, they raise an inference between the diagnosed conditions and the accepted work factors, sufficient to require OWCP to further develop the claim.¹¹

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹² The Board will, therefore, remand the case to OWCP for further development. On remand OWCP should prepare a statement of accepted facts and obtain a rationalized opinion from an appropriate Board-certified physician as to whether appellant's bilateral lower extremity conditions are causally related to the accepted factors of his federal employment. Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2019 decision of the Office of Workers' Compensation Programs is set aside, and the case remanded for further action consistent with this decision of the Board.

Issued: November 8, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

¹¹ See *D.V.*, Docket No. 17-1590 (issued December 12, 2018); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹² *J.G.*, Docket No. 18-1484 (issued June 14, 2019); *D.V., id.*; *D.G.*, Docket No. 15-0702 (issued August 27, 2015); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).