

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

_____)	
E.G., Appellant)	
)	
and)	Docket No. 19-0914
)	Issued: October 18, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Middleburg Heights, OH, 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 March 25, 2019 appellant, through counsel, filed a timely appeal from a February 28, 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 diagnosed medical 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 June 18, 2018 appellant, then a 56-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed right knee arthritis due to factors of his federal employment. He indicated that he first became aware of his condition and first realized its relation to his federal employment on December 26, 2012. Appellant did not stop work. In a separate statement, he indicated that his injury was related to standing for several hours per day, walking on uneven ground/crossing lawns, climbing steps, bending at the knees, and lifting mail pieces up to 70 pounds.

In a development letter dated June 22, 2018, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for appellant's completion. OWCP afforded appellant 30 days to submit additional evidence and respond to its inquiries. No additional evidence was received.

By decision dated August 15, 2018, OWCP denied appellant's claim. It accepted that appellant's federal employment required standing, walking, climbing, bending, and lifting as alleged, but denied the claim finding that the evidence of record did not establish a valid medical diagnosis in connection with the accepted employment factors. Thus, OWCP concluded that he had not met the requirements to establish an injury as defined by FECA.

On August 24, 2018 counsel requested a telephonic hearing before an OWCP hearing representative.

Appellant submitted a July 12, 2017 report from Dr. Daniel Karns, a Board-certified orthopedic surgeon, who indicated that appellant was seen for a follow-up for right knee pain and that he had a past medical history of arthritis.

Appellant also submitted a portion of a June 12, 2017 report from Dr. Joseph Bartal, a Board-certified podiatrist, who diagnosed lesion of plantar nerve, left.

A telephonic hearing was held before an OWCP hearing representative on January 3, 2019.

By decision dated February 28, 2019, OWCP's hearing representative affirmed the August 15, 2018 decision.

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 *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 To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit 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 question that requires rationalized medical opinion evidence to resolve the issue.⁷ 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.⁸ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).⁹

ANALYSIS

The Board finds that appellant has met his burden of proof to establish the diagnosed medical condition of lesion of the plantar nerve on the left. The Board further finds, however, that he has not met his burden of proof to establish that his diagnosed plantar nerve condition is causally related to the accepted factors of his federal employment.

Dr. Bartal, in his report dated June 12, 2017, provided a diagnosis of lesion of the plantar nerve on the left. Although the record supports that a diagnosis has been established, the medical reports of Dr. Karns and Dr. Bartal failed to adequately explain how appellant sustained an employment-related injury. Neither Dr. Karns nor Dr. Bartal provided an opinion as to the causal relationship between the employment factors accepted by OWCP and a diagnosed condition. 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.¹⁰ These reports, therefore, are insufficient to establish appellant's claim.

⁴ *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 *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 *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁹ *Id.*; *Victor J. Woodhams*, *supra* note 6.

¹⁰ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

The Board has consistently held that complete medical rationalization is particularly necessary when there are preexisting conditions involving the same body part,¹¹ and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.¹² Appellant has submitted no such medical evidence in support of his claim. Thus, the Board finds that the reports from Drs. Karns and Dr. Bartal are insufficient to meet appellant's burden of proof.¹³

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 the diagnosed medical condition of lesion of the plantar nerve on the left. The Board further finds, however, that

¹¹ *E.g.*, *K.R.*, Docket No. 18-1388 (issued January 9, 2019).

¹² *See, e.g.*, *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *J.B.*, Docket No. 17-1870 (issued April 11, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *P.O.*, Docket No. 14-1675 (issued December 3, 2015).

¹³ *See M.A.*, Docket No. 19-0656 (issued September 13, 2019).

he has not met his burden of proof to establish that his diagnosed plantar nerve condition is causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: October 18, 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