

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

V.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
San Diego, CA, Employer)

**Docket No. 19-0936
Issued: October 7, 2019**

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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 29, 2019 appellant, through counsel, filed a timely appeal from a February 11, 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.

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 bilateral arthritic hand and feet conditions causally related to the accepted factors her federal employment.

FACTUAL HISTORY

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

On February 9, 2017 appellant, then a 53-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that the arthritis in her hands and feet had been aggravated by her federal employment duties. She stopped work on January 18, 2017.

OWCP received several medical reports from Dr. James Italiano, a treating Board-certified family practitioner, dated from January 13 to 16, 2017 in which he diagnosed severe pain due to erosive bilateral hand and foot osteoarthritis. Dr. Italiano opined that appellant's employment duties of operating her mail vehicle and repetitive use of the hands and wrists for handling mail activities aggravated her conditions.

Appellant also submitted a series of reports from Dr. Jeffrey Schiffman, a Board-certified orthopedic surgeon, dated from February 8 to March 13, 2017. Dr. Schiffman noted that appellant had experienced increasing complaints of hand and foot pain for the past five years and he diagnosed erosive arthritis in the fingers, bilateral foot arthritis, and bilateral hand arthritis. He opined that appellant sustained injury due to her employment duties, which entailed entering and exiting the mail vehicle, frequent standing and walking long periods of time, and repetitive use of the hands and wrists while handling mail.

By decision dated May 15, 2017, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted federal employment factors.

On September 12, 2017 appellant, through counsel, filed an appeal of the May 15, 2017 OWCP decision to the Board and, by decision dated February 20, 2018,⁴ the Board affirmed the May 15, 2017 OWCP decision. The Board found that appellant had failed to submit a rationalized medical opinion that her diagnosed arthritic conditions were causally related to the accepted employment factors.

On February 4, 2019 appellant, through counsel, requested reconsideration with OWCP and in support thereof submitted a July 13, 2017 report by Dr. Mark Rechnic, a Board-certified plastic surgeon, and a September 13, 2017 progress report from Dr. Schiffman.

³ Docket No. 17-1926 (issued February 20, 2018).

⁴ *Id.*

In the July 13, 2017 report, Dr. Rechnic detailed appellant's employment and medical histories. He diagnosed left ring finger "s/p orif" and diffuse small joint osteoarthritis. Dr. Rechnic reported that appellant had not worked for the past several months due to her hand conditions. He opined that appellant clearly had a work-related condition and that the issue was one of apportionment as her employment had aggravated her preexisting arthritic condition.

Dr. Schiffman, in his September 13, 2017 report, detailed appellant's symptoms and noted that she had worked 10 hours days for the past five years at the employment establishment. He diagnosed erosive arthritis in the fingers, bilateral foot arthritis, and bilateral hand arthritis. Dr. Schiffman opined that appellant preexisting hand arthritis had been aggravated by repetitive use of her hands at work, resulting in a permanent aggravation. In support of this conclusion, he noted that repetitive use of her hands at work more likely than not aggravated the underlying bilateral hand arthritis. The increased trauma over time resulted in increased symptoms. Dr. Schiffman also opined that the prolonged walking appellant performed at work had permanently aggravated her bilateral foot first metatarsophalangeal arthritis. He provided work restrictions.

By decision dated February 11, 2019, OWCP denied modification of the denial of the claim finding that appellant had not met her burden of proof to establish her claim as the medical evidence she submitted was conclusory and unrationalized.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of establishing 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."⁸ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant 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

⁵ *Supra* note 2.

⁶ *C.H.*, Docket No. 19-0409 (issued August 5, 2019); *F.M.*, Docket No. 18-1793 (issued April 24, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *C.H.*, *id.*; *F.M.*, *id.*; *Delores C. Ellyett*, 41 ECAB 992 (1990)

⁸ 20 C.F.R. § 10.5(q).

claimed;⁹ and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹⁰

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish bilateral arthritic hand and feet conditions causally related to the accepted factors of her federal employment.

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's May 15, 2017 decision because the Board considered that evidence in its February 20, 2018 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹²

Following the Board's February 20, 2018 decision, OWCP received reports from Drs. Rechnic and Schiffman. Both physicians opined that appellant's bilateral hand and foot arthritis had been aggravated by her repetitive employment duties. In the July 2017 report, Dr. Rechnic opined that it was clear that appellant's conditions were employment related, and the only issue was the degree that her work aggravated her preexisting arthritis. On September 13, 2017 Dr. Schiffman opined that appellant's diagnosed conditions had been aggravated by her repetitive use of her hands and prolonged walking. While both physicians generally supported causal relationship, both offered only conclusory opinions. The Board has previously held that mere conclusory statements, not fortified by explanation, are insufficient to establish causal relationship between employment factors and diagnosed conditions.¹³ Without further explanation as to how, physiologically, the movements involved in appellant's employment duties caused or contributed to the diagnosed conditions, these opinions on causal relationship are of limited probative value.¹⁴

On appeal counsel argues that OWCP failed to adjudicate the claim in accordance with the proper standard of causation and failed to give due deference to the findings of the attending

⁹ *F.M.*, *supra* note 6; *L.E.*, Docket No. 18-1138 (issued February 1, 2019); *Michael R. Shaffer*, 55 ECAB 386 (2004).

¹⁰ *L.E.*, *id.*; *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹¹ *M.S.*, Docket 19-0189 (issued May 14, 2019); *L.T.*, Docket No, 18-1603 (issued February 21, 2019).

¹² *T.J.*, Docket No. 18-1477 (issued April 4, 2019).

¹³ *M.S.*, Docket No. 19-0587 (issued July 22, 2019); *B.C.*, Docket No. 18-1735 (issued April 23, 2019); *V.S.*, Docket No. 17-1926 (issued February 20, 2018); *N.M.*, Docket No. 010-0283 (issued August 19, 2010).

¹⁴ *M.S.*, *id.*; *B.C.*, *id.*; *S.C.*, Docket No. 17-0103 (issued May 2, 2017).

physician. As explained above, appellant has not submitted rationalized medical evidence to establish causal relationship between the diagnosed conditions of bilateral hand and feet arthritis and the accepted factors of her federal employment. As such, she has not met her burden of proof.

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

Appellant has not met her burden of proof to establish bilateral arthritic hand and feet conditions causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 7, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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