

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

_____)	
E.S., Appellant)	
)	
and)	Docket No. 18-1312
)	Issued: April 3, 2020
U.S. POSTAL SERVICE, POST OFFICE, Mesa, AZ, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On June 20, 2018 appellant, through counsel, filed a timely appeal from an April 18, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the Federal Employees' Compensation Act³ (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 The Board notes that, following the April 18, 2018 decision, OWCP received additional evidence. 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.*

³ 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On August 2, 2017 appellant, then a 40-year-old city carrier associate, filed an occupational disease claim (Form CA-2) alleging that he developed a right foot callous and ulcer due to factors of his federal employment including prolonged walking with a mail satchel in varying weather conditions.⁴ He noted that he first became aware of his condition on June 15, 2017 and realized that it was causally related to his employment on July 25, 2017. Appellant stopped work on August 2, 2017. The employing establishment challenged appellant's claim, noting that he had a preexisting foot condition.

Appellant was treated in the emergency room on July 25, 2017 by a physician assistant who diagnosed a right foot ulcer due to diabetes mellitus. He was also examined on that date by a nurse for his complaint of a "hole" on the bottom of his right foot. The nurse diagnosed a right foot ulcer. An x-ray of the right foot also dated July 25, 2017 revealed a plantar soft tissue ulcer and no evidence of osteomyelitis, calcaneal spur, or vascular calcification.

On August 1, 2017 Dr. Brett Roeder, a podiatrist, evaluated appellant for a right plantar ulcer to the submetatarsal area, a wound to the right ankle, and a callous at the left submetatarsal area. He noted that appellant reported right foot wounds for one month. On examination Dr. Roeder found bilateral second and fifth metatarsal head hyperkeratosis, dried blood on the plantar right fifth metatarsal head, a central wound of the right second metatarsal head, a partial thickness ruptured blister right hallux, and a partial thickness posterior Achilles wound. He diagnosed diabetes with neuropathy, pes cavus, preulcerative left metatarsal heads, and right foot wounds. Dr. Roeder cleaned the right foot wounds and performed excisional debridement with a scalpel. He recommended a diabetic insole. In a return to work note dated August 1, 2017, Dr. Roeder advised that appellant was to remain off work for four weeks.

In an August 2, 2017 statement, appellant reported discomfort on the bottom of his foot, which began on June 15, 2017. He had attributed his foot pain to his job duties as a mail carrier, noting that he had continued to work. Appellant indicated that the foot soreness became callouses and then ulcers. He explained that he worked in the rain and his shoes and socks became wet, which softened his skin peeling back the ulcer and callouses and creating a hole in the bottom of his foot.

In an August 9, 2017 development letter, OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical information, including a physician's reasoned opinion addressing the causal relationship between his claimed conditions and specific work factors. OWCP afforded appellant 30 days to submit the requested information.

In an August 15, 2017 duty status report (Form CA-17), a podiatrist with an illegible signature diagnosed a right diabetic foot wound, diabetes, and neuropathy and found that appellant

⁴ Appellant noted that he was diabetic.

could not return to work. The podiatrist noted a history of developing a callous on his foot from walking and developed an ulcer. The podiatrist checked both the “Yes” and “No” boxes, responding to the question of whether the factors identified had caused the diagnosed conditions.

By decision dated September 11, 2017, OWCP denied appellant’s occupational disease claim, finding that the medical evidence submitted was insufficient to establish that he sustained a diagnosed condition causally related to the accepted factors of his federal employment.

OWCP received September 3 and 28, 2017 Form CA-17 reports from Dr. Eunis Bello, a podiatrist. Dr. Bello diagnosed a right foot infection requiring emergency surgery and checked a box marked “yes” in response to whether the history provided by appellant had caused the diagnosed conditions. She indicated that he remained unable to work.

In a September 8, 2017 medical report of duty status form, a medical provider with an illegible signature indicated that appellant had undergone a hind foot amputation of right foot wound and would be disabled for six months in order to heal. The medical provider noted that appellant was at risk for leg amputation.

In a letter dated September 27, 2017, Dr. Bello noted that appellant had sustained a right foot injury that began as a callous. She noted that mail carriers in appellant’s locale were required to walk over varied terrain in both wet and dry weather. Dr. Bello indicated that, due to the monsoon rains and wet boots, and socks, the skin on appellant’s foot had become moist and rubbed open to expose his ulcer. She indicated that the ulcer then became infected and had necessitated a metatarsal amputation of the right foot. Dr. Bello again noted the types of physical activities noted in those who have developed callouses and ulcers of the feet. She opined that appellant’s postal activities for work required extensive walking over uneven terrain with added pressure on the feet from carrying a satchel. Dr. Bello concluded that callouses or blisters can form and thereafter result into ulcers.

In Form CA-17 reports dated October 5, 2017 to January 10, 2018, Dr. Bello continued to diagnose a right foot infection requiring emergency surgery. She checked a box marked “yes” that the history of injury provided by appellant corresponded to the alleged employment factors. Dr. Bello found that he remained disabled from employment.

On October 11, 2017 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

In a Form CA-17 report dated October 19, 2017, Dr. D.R. Pena, a podiatrist, diagnosed a right foot infection requiring surgery and checked a box marked “yes” that the history of injury provided by appellant corresponded to the alleged employment factors. He indicated that appellant was totally disabled. Dr. Pena provided similar Form CA-17 reports on November 24 and December 20, 2017. In January 24 and February 7 and 20, 2018 Form CA-17 reports, he provided work restrictions. Dr. Mathew Pettengill, a podiatrist, provided similar Form CA-17 reports on November 2 and December 1, 2017.

A telephonic hearing was held on February 26, 2018. Appellant testified that he had developed a callous on his foot from walking in wet shoes and socks in June and July 2017 during the rainy season. He claimed that his wet socks softened the callous exposing an ulcer. Appellant indicated that the ulcer subsequently became infected requiring an amputation.

In a letter dated April 2, 2018, counsel referenced an attached laboratory report dated July 25, 2017, which reported “A1c” results within normal limits. He indicated that he would submit an operative report and an explanation as to why appellant had required an amputation. No further evidence was received.

By decision dated April 18, 2018, the hearing representative affirmed the September 11, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including 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 period of FECA,⁶ that an injury was sustained while in the performance of duty, as alleged, and that any disability or specific 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 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 claimant, 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 claimant.¹¹

⁵ *Supra* note 3.

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 *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

¹⁰ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

¹¹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

ANALYSIS

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

In support of his claim, appellant submitted a series of medical reports from his attending podiatrists which generally supported that his employment duties resulted in his diagnosed right foot conditions. In a September 27, 2017 report, Dr. Bello noted that appellant had a callous on his foot, which was aggravated to become an ulcer, that the ulcer became infected, and that his condition ultimately required an amputation. She explained that the callous turned into an ulcer because appellant's employment duties as a mail carrier required walking on different terrain, carrying a heavy satchel, which put pressure on his feet, and enduring wet and dry temperatures. Dr. Bello indicated that having wet boots and socks as the result of rain had moistened the skin on appellant's foot and exposed the ulcer. She noted that, due to an infection of the work-related ulcer, appellant had undergone a metatarsal amputation of the right foot. Dr. Bello opined that the accepted employment duties of miles of walking, the weight of the satchel he carried, and weather conditions in which he worked were sufficient so that blistering and calluses could form and develop into ulcers, as is alleged in this claim.

The Board finds that the September 27, 2017 report of Dr. Bello is sufficient to require further development of the medical evidence to see that justice is done.¹² Dr. Bello is a specialist in podiatry who is qualified in her field of medicine to render rationalized opinions on the issue of causal relationship and she provided a comprehensive understanding of the claimed mechanism of injury. It is further found that she suggested a pathophysiological explanation as to how appellant's employment duties as a city carrier associate were sufficient to cause the diagnosed right foot conditions which resulted in an amputation. Dr. Bello explained how a callous had been aggravated by pressures while walking and carrying a heavy satchel with moisture in his socks due to rainy weather such that an ulcer occurred. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal relationship beyond all possible doubt. Rather, the evidence required is only that which is necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical such that a logical inference can be drawn.¹³ Accordingly, the Board finds that Dr. Bello's medical opinion is rationalized and logical and is therefore sufficient to require further development of appellant's claim.¹⁴

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares

¹² *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹³ See Docket No. *N.L.*, 19-1592 (issued March 12, 2020); *John J. Carlone*, 41 ECAB 354 (1989); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein.

¹⁴ See *J.H.*, *supra* note 12.

responsibility in the development of the evidence.¹⁵ OWCP has an obligation to see that justice is done.¹⁶

On remand OWCP shall refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts. Its referral physician shall review the reports of Dr. Bello and, thereafter, provide a well-rationalized opinion as to whether appellant's right foot conditions are causally related to, or had been aggravated by, the accepted factors of his federal employment. After such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board

Issued: April 3, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹⁵ See *id.* See also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁶ See *B.C.*, Docket No. 15-1853 (issued January 19, 2016).