United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	**Docket No. 19-1301**
	)	**Issued: January 29, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
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 May 24, 2019 appellant, through counsel, filed a timely appeal from a February 26, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 a left foot condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On January 22, 2018 appellant, then a 56-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a foot strain or fracture due to factors of his federal employment. He explained that as a city carrier he walked each day while in the performance of duty. Appellant stopped work on January 16, 2018.

In a narrative statement dated January 16, 2018, appellant indicated that he was injured while delivering mail on approximately September 27 or 28, 2017 around 11:00 a.m. when he felt a severe pain on the outside of his left foot. He indicated that he had neither stumbled, tripped, nor fell, nor could he remember a specific incident where he would have injured his foot. Appellant only remembered that he experienced sharp pain in his foot while delivering mail and the pain increased throughout the day. By the time he had returned to the station around 6:30 p.m., he noted that he had to limp in order to walk, as the pain in his foot was severe. Appellant notified his nighttime supervisor and then went to urgent care on September 29, 2017 to see a physician and have an x-ray completed. The x-ray did not show a fracture, but he scheduled an appointment with a podiatrist to find out what was causing his pain. Appellant noted that he continued to work because the x-ray failed to demonstrate that he had broken his foot. On December 22, 2017 he had another x-ray completed which showed a significant break in the fifth metatarsal on his left foot. Appellant noted that his podiatrist advised that the fracture could have initially been minor and, therefore, difficult to detect on the original x-ray. However, walking on the fractured foot for a few months would have caused the fracture to worsen. Appellant was given a boot and advised to take four weeks off from work in order for the fracture to heal.

In a January 15, 2018 report, Dr. Larry Menacker, a podiatrist, noted that appellant reported that he had aching pain and the symptoms had remained the same over time as a result of delivering mail in late September 2017. He diagnosed fifth metatarsal base fracture, avulsion-type left, and noted that appellant presented with pain in the area for the past five months.

An x-ray of the left foot dated February 8, 2018 demonstrated no significant interval change in the fifth metatarsal fracture.

On February 12, 2018 Dr. Menacker reported that appellant's symptoms had improved since he had been immobilized in a boot. He indicated that appellant would continue to be immobilized in a fracture walker. Dr. Menacker noted that appellant's condition could require surgical intervention if it went on to nonunion.

In a development letter dated March 9, 2018, OWCP informed appellant that the factual and medical evidence of record was insufficient to establish his claim. It advised him regarding the evidence necessary to establish his claim and afforded him 30 days to submit the necessary evidence.

In an April 6, 2018 response to OWCP's questionnaire, appellant indicated that his employment duties required standing on his feet casing mail, driving a postal vehicle, constantly stepping in and out of his truck making deliveries and carrying packages, walking up and down steps for homes with porches, and walking to deliver a portion of his mail route on foot. He explained that he was working 6 days per week for 50 to 60 hours per week. Appellant stood at his case for two hours and the rest of the time, excluding breaks, he was constantly on his feet, in and out of his vehicle, walking, doing steps, and carrying mail and packages. He noted that he did not have time for hobbies and took a bike ride only about four times per year.

By decision dated April 30, 2018, OWCP accepted that the alleged employment factors occurred while in the performance of duty, as alleged. However, it denied his claim because the medical evidence of record failed to establish a causal relationship between his diagnosed left foot condition and the accepted factors of his federal employment.

On May 15, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a narrative report dated July 25, 2018, Dr. Menacker indicated that he first saw appellant as a new patient in his office on November 20, 2017 for a painful left foot. During that visit, appellant described the left foot injury as an ankle sprain-type mechanism which resulted in pain and swelling in his left foot. He explained that it occurred while delivering the mail on his route and he lost his balance due to a crack in the pavement. Dr. Menacker believed that it was the sudden traction of the fifth metatarsal base from that inversion injury that had led to the fracture in that location. He concluded that appellant injured his left foot while working as a postal employee delivering mail on his route in late September 2017. Dr. Menacker's final diagnoses were an avulsion-type fracture of the fifth metatarsal tuberosity and peroneal tendinitis of the left foot. He advised that appellant's left foot would also be prone to reinjury and appellant would have some chronic pain with exertion and extreme temperature changes during his lifetime as he aged.

The hearing was held on September 11, 2018. Appellant testified that he had two prior injuries to his left ankle, one in 2009 while on his route and another on February 13, 2012 when he twisted his ankle. He explained that he had filed a claim for his 2012 injury, and that claim had been assigned OWCP File No. xxxxxx355. An OWCP hearing representative held the case record open for 30 days for the submission of additional evidence. OWCP did not receive additional evidence.

By decision dated October 23, 2018, an OWCP hearing representative affirmed the April 30, 2018 decision finding that the medical evidence of record failed to provide a well-rationalized opinion regarding the issue of causal relationship. The hearing representative also found that the opinion of Dr. Menacker did not contain an accurate history of injury as reported by appellant.

On November 28, 2018 appellant, through counsel, requested reconsideration.

In support of his request for reconsideration appellant provided an October 30, 2018 statement regarding how he had injured his foot. He indicated that the first time he remembered

rolling his ankle was in May 2009. Appellant noted that he injured his ankle in 2012 when he twisted his ankle and fell. He explained that after the 2012 injury his ankle was prone to give out on him and it got to the point where he was rolling it a few times every week. Appellant indicated that since breaking the bone in his foot in September 2017 he received a brace from Dr. Menacker and when he went back to work in August 2018, wearing that brace allowed him to work without fear of rolling his ankle. He explained why this information had not been provided when responding to the claim development questionnaire.

In an amended report dated November 12, 2018, Dr. Menacker reiterated the contents of his July 25, 2018 report, but updated the history of injury as reported by appellant. He opined that there was no question in his mind that the fracture suffered by appellant in 2017 was caused by a sudden inversion ankle injury that frequently occurred while appellant delivered mail on his regular daily route.

By decision dated February 26, 2019, OWCP denied modification of its prior 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 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

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

[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] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

between the diagnosed condition and the implicated employment factors 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 factors.[9]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left foot condition causally related to the accepted factors of his federal employment.

In support of his claim appellant submitted medical reports from his treating podiatrist, Dr. Menacker. In reports dated January 15 and February 12, 2018, Dr. Menacker provided diagnoses and possible treatment options, but did not opine as to causal relationship. 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.[11] These reports, therefore, are insufficient to establish appellant's claim.

In reports dated July 25 and November 12, 2018, Dr. Menacker noted the history of injury and diagnosed medical conditions related to the left foot. He opined that appellant was injured while delivering mail on his route and there had been sudden traction on the fifth metatarsal base. While Dr. Menacker clearly expressed his belief that there was "no question" that the foot fracture occurred due to a sudden inversion ankle injury while delivering mail, he did not provide a pathophysiological explanation as to how the accepted factors of appellant's employment either caused or contributed to his diagnosed conditions.[12] The Board has consistently held that complete medical rationalization is particularly necessary when there are preexisting conditions involving the same body part,[13] and has required medical rationale differentiating between the effects of the

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

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

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

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

[12] *Supra* notes 9 and 10.

[13] *K.R.*, Docket No. 18-1388 (issued January 9, 2019).

work-related injury and the preexisting condition in such cases.[14] Thus, the Board finds that these two reports from Dr. Menacker are also insufficient to establish causal relationship.

Appellant also submitted diagnostic imaging studies in the form of x-rays. The Board has held that diagnostic studies lack probative value as they do not provide an opinion on causal relationship between accepted employment factors and a claimant's diagnosed conditions.[15] This evidence is therefore insufficient to establish appellant's claim.

As appellant has not submitted the necessary rationalized medical evidence to support his claim for a left foot condition causally related to the accepted factors of his federal employment, he has failed to meet his 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.[16]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a left foot condition causally related to the accepted factors of his federal employment.

[14] *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).

[15] *See I.C.*, Docket No. 19-0804 (issued August 23, 2019).

[16] Upon return of the case record OWCP should consider administratively combining this claim with appellant's prior left lower extremity traumatic injury claim in OWCP File No. xxxxxx355.

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 29, 2020
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