

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

C.C., Appellant)	
)	
and)	Docket No. 20-0744
)	Issued: October 26, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Pahrump, NV, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On February 19, 2020 appellant filed a timely appeal from a February 3, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 her burden of proof to establish that she developed basal cell carcinoma causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On November 19, 2019 appellant, then a 39-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed basal cell carcinoma due to factors of her federal employment, while working outside in the sun. She noted that she first became aware of

¹ 5 U.S.C. § 8101 *et seq.*

her condition and its relation to her federal employment on November 19, 2019. Appellant stopped work on November 18, 2019.

In an accompanying narrative statement, appellant noted that she had her first basal cell carcinoma removed from her right temple on November 22, 2010. She indicated that she had her second basal cell carcinoma removed from the right side of her forehead on June 1, 2017. Appellant stated that she had her third basal cell carcinoma removed from the top area of her forehead on November 5, 2019. She noted that her physician informed her that her medical condition was a direct result of her job, which required working in the sun. Appellant noted that she worked outside five hours per day, five days per week, constantly exposed to sunlight. She indicated that she worked for the employing establishment for approximately 11 years and 3 months. Appellant asserted that she consistently used hats, sunscreen, and protective clothing that she bought at her own expense.

A pathology report dated November 2, 2010, analyzing a skin sample from appellant's right forehead and temple, revealed atypical nevus and basal cell carcinoma.

A pathology report dated November 9, 2010, analyzing a skin sample from appellant's right forehead, revealed compound, melanocytic nevus with architectural disorder, and mild cytologic atypia of melanocytes.

In a November 22, 2010 operative report, Dr. Robert Lieberman, a Board-certified dermatologist, noted the results and operative details of appellant's Mohs micrographic surgery on her right temple. He listed a postoperative diagnosis of basal cell carcinoma.

A pathology report dated May 13, 2017, analyzing a skin sample from appellant's right frontal scalp, revealed basal cell carcinoma.

In a June 1, 2017 report, Dr. Daniel Taheri, a Board-certified dermatologist, noted that appellant presented with basal cell carcinoma located on the right frontal scalp. He examined her and diagnosed basal cell carcinoma. Dr. Taheri performed Mohs surgery on appellant's right frontal scalp.

A pathology report dated October 14, 2019 analyzing a skin sample from appellant's left forehead, revealed basal cell carcinoma.

In a statement dated November 20, 2019, appellant's supervisor controverted appellant's occupational disease claim, asserting that appellant spent her entire life in the desert and that her skin cancer could have been caused by other factors.

In a letter dated November 21, 2019, Cyril Joseph, a physician assistant, noted that appellant had been diagnosed with actinic keratosis and basal cell carcinoma. He opined that there was a direct correlation between her sun exposure at work and her skin cancer. Mr. Joseph recommended that appellant refrain from working outdoors.

In a development letter dated December 5, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. In a separate development letter of even date, OWCP

also requested additional information from the employing establishment. It afforded both parties 30 days to respond.

OWCP subsequently received additional evidence, including a November 5, 2019 report from Dr. Farrah Awadalla, a Board-certified dermatologist, who noted that appellant presented with basal cell carcinoma located on the left forehead. Dr. Awadalla examined her and diagnosed nodular basal cell carcinoma. He recommended and performed Mohs surgery on appellant's left forehead.

In a letter dated December 4, 2019, Dr. Awadalla noted that appellant had been diagnosed with actinic keratosis and basal cell carcinoma. He indicated that there was a direct correlation between her sun exposure at work and her skin cancer. Dr. Awadalla recommended that, due to the occupational hazard to appellant's life of exposure to sunlight, she no longer work outdoors.

In a narrative statement dated December 11, 2019, appellant noted that she had been employed as a rural carrier for approximately 11 years and 4 months. She indicated that she was exposed to the sun for approximately five hours per day while delivering mail and packages, during peak UV radiation hours. Appellant asserted that her skin cancer was caused by the prolonged sun exposure required by her work. She noted that the employing establishment never provided her with any type of sun protection, including hats or sunscreen. Appellant indicated that, outside of her employment, she had normal exposure to sunlight. She stated that she enjoyed family activities including camping, hiking, and fishing approximately three to five times per year. Appellant noted that she used protective clothing and sunscreen when engaging in outdoor activities. She listed her medical history and asserted that she always used protective clothing and sunscreen at work. Appellant noted that she had no other cancers and that her mother had one occurrence of melanoma.

A pathology report dated December 20, 2019, analyzing a skin sample from appellant's right forehead, revealed basal cell carcinoma.

In a letter dated December 26, 2019, the employing establishment again controverted appellant's occupational disease claim, noting that she was exposed to sunlight outside of her employment. It indicated that she was exposed to sunlight four to six hours per day, five days per week. The employing establishment stated that appellant purchased her own sunscreen and protective clothing. It attached photos of her outdoors, engaging in nonwork-related activities, from 2011 to 2019.

In a statement dated January 2, 2020, appellant asserted that her work activities significantly contributed to her four diagnoses of basal cell carcinoma. She noted that she had three diagnoses to the right side of her forehead-the right temple, right scalp/hairline, and right forehead. Appellant attributed these diagnoses to her employment and the use of her work vehicle, which exposed her to the sun/ultraviolet (UV) rays on the right side of her face and body. She also indicated that she had one occurrence to the very top of her forehead, which she attributed to her work sorting mail into mailboxes. Appellant also submitted photos of the sunscreen and hats that she used. She further submitted photos of her forehead and right temple.

In a January 7, 2020 report, Dr. Awadalla noted appellant's history of basal cell carcinoma and treatment. He indicated that she had newly diagnosed basal cell carcinoma that was diagnosed on December 11, 2019. Dr. Awadalla noted that appellant used sunscreen on a daily basis for more than 10 years. He also noted that she delivered mail outdoors at the peak of UV radiation hours and was exposed to the sun for approximately five hours per day. Dr. Awadalla noted that skin cancer could be caused by prolonged exposure to the sun. He opined that appellant's work activities, including delivering mail, increased her sun exposure and therefore were a major contributing factor towards her multiple and reoccurring skin conditions. Dr. Awadalla noted that the "exposure [appellant] has had from her federal employment contributed to her current skin condition." He explained that if appellant worked indoors as opposed to in sunlight for 5 to 6 hours in the mid-day sun for 5 days per week that she would be less likely to have the number of skin cancer diagnoses. Dr. Awadalla cited to a study, which indicated that UV radiation from sunlight is the most important environmental cause of basal cell carcinoma.

By decision dated February 3, 2020, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between her basal cell carcinoma and the accepted factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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, 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 claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁶

² *Id.*

³ *R.M.*, Docket No. 20-0342 (issued July 30, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *V.P.*, Docket No. 20-0415 (issued July 30, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ 20 C.F.R. § 10.115; *S.A.*, Docket No. 20-0458 (issued July 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *See B.H.*, Docket No. 18-1693 (issued July 20, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ 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.⁸

ANALYSIS

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

In support of her claim, appellant submitted medical reports and letters from Dr. Awadalla who discussed her history of injury and repeated diagnoses of basal cell carcinoma. In a report dated November 5, 2019, Dr. Awadalla examined her and diagnosed nodular basal cell carcinoma. In a letter dated December 4, 2019, he noted that appellant had been diagnosed with actinic keratosis and basal cell carcinoma and indicated that there was a direct correlation between her sun exposure at work and her skin cancer. In a report dated January 7, 2020, Dr. Awadalla noted her history of basal cell carcinoma and treatment. He noted that the “exposure [appellant] has had from her federal employment contributed to her current skin condition” and explained that if appellant worked indoors as opposed to in sunlight for 5 to 6 hours in the mid-day sun for 5 days per week that she would have been less likely to have the number of skin cancer diagnoses.

The Board finds that Dr. Awadalla’s affirmative opinion on causal relationship provided a factual history confirming the accepted employment factors and accurately noted appellant’s medical history and course of treatment. He explained that her prolonged exposure to sunlight while delivering mail was a major contributing factor towards her reoccurring basal cell carcinoma. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt.⁹ Rather, the evidence required is only that necessary convince the adjudicator that the conclusion is rational, sound, and logical.¹⁰ The Board finds that Dr. Awadalla’s opinion, while insufficiently rationalized to meet appellant’s burden of proof, is sufficient, given the absence of opposing medical evidence, to require further development of the record as to whether her basal cell carcinoma is causally related to the accepted factors of her federal employment.¹¹

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

⁷ *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *See Frederic K. Samuels*, Docket No. 97-1590 (issued March 3, 1999) (The Board held that the case should be remanded for medical development on the issue of whether the claimant’s exposure to sun as a postal employee was sufficient to have resulted in a skin cancer diagnosis).

¹⁰ *S.M.*, Docket No. 19-1634 (issued August 25, 2020); *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).

¹¹ *See V.P.*, *supra* note 4; *see also supra* note 9.

done.¹² The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.¹³

On remand OWCP shall refer appellant, a statement of accepted facts, and the medical record to an appropriate medical specialist. The chosen physician shall provide a rationalized opinion as to whether the diagnosed condition is causally related to the accepted factors of appellant's federal employment. If the physician opines that the diagnosed condition is not causally related, he or she must explain, with rationale, how or why the opinion differs from that of Dr. Awadalla. Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

¹² *Id.*

¹³ 20 C.F.R. § 10.121.

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 26, 2020
Washington, DC

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

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board