

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

_____)	
R.T., Appellant)	
)	
and)	Docket No. 20-0846
)	Issued: November 2, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Panorama City, CA, 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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 9, 2020 appellant filed a timely appeal from a February 2, 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 his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 1, 2017 appellant, then a 52-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that after 29 years in his position, he developed bilateral foot and left ankle conditions as a result of factors of his federal employment, including standing and walking while carrying a mail satchel weighing between 15 to 45 pounds for eight hours a day. He did not stop work.

In a June 8, 2017 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and afforded him 30 days to submit the necessary evidence.

On April 24, 2017 Dr. Song M. Yoo, a podiatrist, noted that he first examined appellant in January 2013 due to foot and ankle pain. He provided the results of magnetic resonance imaging (MRI) scans of his ankles dated August 23, 2016. On the right the scan demonstrated metatarsophalangeal (MTP) degenerative changes with joint effusion, bursitis, chronic pressure lesion to the fifth MTP joint, and tarsometatarsal joint degenerative changes without acute fracture or dislocation. On the left the MRI scan demonstrated first MTP degenerative changes with joint effusion, bursitis, chronic pressure lesion on the fifth MTP joint, and tarsometatarsal joint degenerative changes without acute fracture or dislocation. Dr. Yoo opined that appellant's conditions were directly related to his work, noting that appellant was required to walk all day as a function of his job duties. He concluded, "It is my opinion that regardless of when the initial time of complaint for his foot and ankles started, his job duties for the [employing establishment] has slowly contributed to the progressive nature of his conditions over the past few years."

By decision dated August 23, 2017, OWCP denied appellant's claim, finding that he had not submitted medical evidence containing a diagnosis in connection with the accepted employment factors.

On October 25, 2017 appellant requested reconsideration of the August 23, 2017 decision. He submitted a September 23, 2017 report from Dr. Yoo in which he diagnosed arthritis of the ankle and foot, degenerative tear at the plantar plate, and bursitis of the left forefoot. Dr. Woo opined that appellant's diagnosed conditions were directly related to work, which required him to walk or stand all day.

By decision dated January 12, 2018, OWCP denied appellant's request for reconsideration of the merits of his claim.

² Docket No. 18-1263 (issued February 7, 2019).

Appellant appealed to the Board. By decision dated February 7, 2019,³ the Board found that OWCP had improperly denied appellant's request for reconsideration of the merits of his claim. The Board remanded the case for OWCP to conduct a merit review and issue an appropriate decision.

By decision dated March 12, 2019, OWCP affirmed, as modified, the August 23, 2017 decision, finding that the medical evidence of record was sufficient to establish diagnoses of bilateral ankle and foot arthritis, degenerative tear at the plantar plate, and bursitis of the left forefoot. The claim remained denied, however, because the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted factors of his federal employment.

On November 22, 2019 appellant requested reconsideration. He provided an October 26, 2019 report from Dr. Yoo where he diagnosed anterior talofibular ligament damage, deltoid ligament injury with old avulsion injury, peroneal tendons and posterior tibial tendinitis, Achilles tendinitis, and chronic plantar fasciitis on the right. In appellant's left foot, Dr. Yoo diagnosed conditions including arthritic changes to the first metatarsal phalangeal joint, degenerative plantar plate tear of the first metatarsal phalangeal joint, Morton's neuroma in the second interspace with bursitis, and tarsometatarsal joint degenerative changes. He opined that appellant's right ankle and left foot conditions were exacerbated by his duties as a mail carrier.

Dr. Yoo explained that he took appellant off work to decrease biomechanical forces/stresses on the joints, ligaments, and tendons for proper healing. He further explained that the biomechanics of basic wear and tear of appellant's foot and ankle, including walking 8 to 10 miles carrying a mail satchel weighing an average of 20 to 25 pounds, added stresses to his foot and ankle that were repeated over three decades, resulting in the progression of his conditions.

By decision dated February 19, 2020, 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,⁴ 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 *Id.*

⁴ *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.⁵ 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.⁶

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.⁷ To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 factor(s) identified by the employee.⁹ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹⁰

ANALYSIS

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

In support of his claim, appellant submitted Dr. Yoo's October 26, 2019 narrative report in which he opined that the physical demands of appellant's federal employment caused his diagnosed medical conditions. Dr. Yoo explained that he took appellant off work to decrease biomechanical forces/stresses on the joints, ligaments, and tendons for proper healing. He further explained that the biomechanics of basic wear and tear of appellant's foot and ankle, including walking 8 to 10 miles carrying a mail satchel weighing an average of 20 to 25 pounds, added stresses to his foot and ankle that were repeated over three decades, resulting in the progression of his conditions.

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *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).

⁷ *T.D.*, Docket No. 20-0921 (issued November 12, 2020); *M.S.*, Docket No. 18-1554 (issued February 8, 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).

⁸ *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 7.

¹⁰ *D.R.*, Docket No. 19-0954 (issued October 25, 2019); *James Mack*, 43 ECAB 321 (1991).

The Board finds that, while Dr. Yoo's October 26, 2019 report is not fully rationalized, he provided a mechanism of injury, referenced objective diagnosis reports, identified employment factors, and opined that the diagnosed conditions are causally related to the accepted employment factors. Thus, the Board finds that Dr. Yoo's opinion is sufficient to require OWCP to further develop the medical evidence.¹¹

It is well established that proceedings under FECA are not adversarial in nature, and that while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹² OWCP has an obligation to see that justice is done.¹³

The Board will, therefore, remand the case for further development of the medical evidence. On remand OWCP shall refer appellant, along with the case record and a statement of accepted facts, for a rationalized opinion from a physician in the appropriate field of medicine as to whether the accepted work factors caused or aggravated appellant's diagnosed medical conditions. If the physician opines that the diagnosed conditions are not causally related, he or she must provide rationale explaining how or why the opinion differs from that of Dr. Yoo. Following this and any other such further development as may be deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹¹ *E.P.*, Docket No. 19-1703 (issued April 16, 2021); *C.W.*, Docket No. 19-0322 (issued July 18, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹² *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹³ *R.B.*, Docket No. 18-0162 (issued July 24, 2019); *K.P.*, Docket No. 18-0041 (issued May 24, 2019).

ORDER

IT IS HEREBY ORDERED THAT the February 2, 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: November 2, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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