United States Department of Labor
Employees' Compensation Appeals Board

K.M., Appellant	)	
and	)	**Docket No. 15-0886**
	)	**Issued: August 7, 2015**
DEPARTMENT OF HOMELAND SECURITY, U.S. COAST GUARD, Honolulu, HI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 13, 2015 appellant filed a timely appeal from a September 29, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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 merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a left ankle condition causally related to factors of his federal employment.

[1] Appellant initially requested oral argument with his appeal. However, by letter dated April 16, 2015, he withdrew his request.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 3, 2014 appellant, then a 63-year-old marine maintenance mechanic leader, filed an occupational disease claim for osteoarthritis in the left ankle. He first became aware of his condition on October 12, 1992 and that it was caused or aggravated by his employment on June 17, 2013. Appellant stated that his job included lifting up to 45 pounds, bending, stooping, standing for long periods of time, working on the ships, walking up and down step ladders and stairs, stepping over uneven footing on large ships and small boats, and running precision machines. The employing establishment became aware of his left ankle condition in the spring of 2013, when he had a scheduled procedure to correct his ankle pain. Appellant was on sick leave from April 5 to 18, 2013 due to the surgery.

With his claim appellant submitted a March 12, 2014 statement, a copy of his position description, a February 14, 2013 magnetic resonance imaging (MRI) scan report of the left ankle, images from his April 5, 2013 left ankle arthroscopy, and various medical treatment notes from Dr. Stuart K. Wakatsuki,[3] a Board-certified orthopedic surgeon.

In his initial report of February 6, 2013, Dr. Wakatsuki stated that appellant had multiple sprains to the left ankle in the past and that the ankle had been bothersome for about 15 years, with progressive worsening. Appellant had been told previously by another physician that he had arthritis. Dr. Wakatsuki was advised that appellant was a maintenance and mechanic leader. He presented examination findings and provided an impression of left ankle arthralgia with mild degenerative joint disease. An MRI scan was recommended. In his February 19, 2013 report, Dr. Wakatsuki reviewed the MRI scan report and noted multiple findings. An impression of left ankle arthralgia with degenerative joint disease was provided. Dr. Wakatsuki noted subtalar joint and degenerative joint disease and that appellant's main symptom was over the anterior talofibular ligament region. A cortisone shot was provided.

In his April 2, 2013 report, Dr. Wakatsuki noted that appellant's pain had returned despite the cortisone shot. An impression of continued left ankle symptomology was provided and arthroscopic intervention planned. Appellant underwent left ankle arthroscopy on April 5, 2013. In his April 15, May 13, and June 11, 2013 reports, Dr. Wakatsuki noted that appellant was stable postsurgery, which included surgical removal of loose body and debridement. In his August 7, 2013 report, he reported that swelling was present with no gross signs of infection, normal strength, and negative drawer test. An impression of continued mild left ankle symptomatology was provided. In his January 6, 2014 report, Dr. Wakatsuki provided an impression of left ankle degenerative joint disease. A note for permanent light duty was provided with restrictions of no going up and down steep stairs, no prolonged standing or walking, greater than 15 minutes.

In an April 7, 2014 letter, OWCP advised appellant of the deficiencies in his claim and provided him 30 days in which to provide additional factual and medical evidence, including a comprehensive medical report from his physician which would provide a well-rationalized medical opinion on the cause of his condition.

[3] Evidence of record indicates that Dr. Wakatsuki passed away in March 2014.

OWCP received an April 25, 2014 statement from appellant, January 23 and February 20, 2014 consents for release of medical information, a position description, the employing establishment's request for medical documentation/reasonable accommodation dated January 23, 2014, January 6, 2013 work restrictions from Dr. Wakatsuki and duplicate reports from Dr. Wakatsuki already of record.

By decision dated June 5, 2014, OWCP denied the claim as the medical evidence was not sufficient to establish that the medical condition was causally related to the work activities.

On July 1, 2014 OWCP received appellant's June 24, 2014 request for reconsideration. In support of his request, appellant submitted a June 24, 2014 letter providing a history of his left ankle condition and a history of medical treatment. Also provided were undated x-ray pictures and various diagrams of a foot.

In an undated report, Dr. Guy Yatsushiro, a Board-certified internist, noted examination findings of June 21, 2014 and reviewed diagnostic testing. The history of the injury was noted as follows: The pain was notable since 1992. There was no overt history of injury to the left ankle. There was a diagnosis of "dropped foot," an injury of the peroneal nerve which caused weakness of the left ankle dorsiflexors, dragging of the left foot, and diminished sensation around the ankle and forefoot. During 1992, appellant noted a daily, constant "aching" of the left anterior ankle with swelling. He was able to play basketball once in a while, but noted ankle swelling. The pain worsened when walking, standing, climbing stairs, and working. There was a slow increase in pain over the years, which caused a limp. Appellant sought medical help and was diagnosed with mild arthritis of his left ankle. He also had a right knee meniscal tear, which was surgically corrected.

Dr. Yatsushiro described appellant's working conditions and noted that his pain was dependent upon his work activities that day and on his level of activity on the weekends. He stated that the left dorsum of appellant's foot and lateral margin of his calf and thigh had remained numb since 1992. There was a history of chronic cervicalgia, cervical spinal stenosis, cervical radiculopathy, and history of dropped foot. Dorsiflexion strength of the left ankle improved. However, there was residual numbness of the dorsum of the left foot, ankle, and numbness of the left lateral thigh and calf. The chronic cervicalgia, spinal stenosis, and cervical radiculopathy were thought unrelated to the dropped foot. Dr. Yatsushiro noted that on February 6, 2013 appellant saw Dr. Wakatsuki for the first time, following a noticeable worsening of his limp while working when he carried heavy items up and down the stairwell and walked on the uneven surfaces. He noted that appellant's pain continued despite arthroscopic surgery of the left ankle for management of osteochondritis dissecans stage IV and removal of a loose bone fragment.

Dr. Yatsushiro diagnosed: (1) arthritis left ankle severe involving the subtalar joint and talar joint; (2) charcot joint left ankle; (3) osteochondritis dissecans stage IV with a loose body, subsequently removed; (4) multiple ankle tendinopathies in the medial and lateral position; (5) retrocalcaneal bursitis; (6) enesthopathy of the plantar fascia; (7) peroneal neuropathy with superficial and deep peroneal involvement, L5-S1 sensory radiculopathy; and (8) unrelated cervical spinal stenosis with chronic pain syndrome stable. He opined that appellant had persistent peroneal nerve palsy, resulting in a charcot joint, or a neural arthritis. Dr. Yatsushiro

also opined that appellant unknowingly repetitively injured the left ankle because of the lack of sensation in the ankle and foot. He explained that the uneven ground, multi stairwells, and heavy lifting were all contributory to appellant's repetitive injuries. In a normal patient, pain was the trigger to stop reinjury. Appellant lacked sensation predisposing him to reinjure his left ankle and foot, repetitively over 20 years. The heavy work, daily lifting, and carrying, crawling, pushing, and stairwells all contributed to the severe arthritis. Dr. Yatsushiro also provided medical explanation as to why appellant did not have rheumatoid arthritis or intermittent claudication due to vascular insufficiency. In regard to the history of chronic cervicalgia and cervical spinal stenosis, he noted that this was stable, and nonprogressive. Dr. Yatsushiro also noted that there were no signs of upper motor neuron lesion, suggesting noninvolvement of the spinal cord or brain. He opined that appellant would need to be on light duty indefinitely.

By decision dated September 29, 2014, OWCP denied modification of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

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 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.[4] 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.[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) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition, and the implicated employment factors. 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.[6]

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[5] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *Solomon Polen*, 51 ECAB 341 (2000).

ANALYSIS

OWCP denied appellant's claim finding insufficient medical evidence to establish that his diagnosed left ankle conditions were caused or aggravated by his work activities.

The determination of whether a diagnosed medical condition is causally related to work factors is generally established by medical evidence.[7] Thus appellant's beliefs regarding causation before OWCP and on appeal have no probative value.

Appellant submitted multiple treatment reports from Dr. Wakatsuki who noted that appellant was a maintenance and mechanic leader and that the left ankle had been bothersome for about 15 years and was progressively worsening. While Dr. Wakatsuki diagnosed left ankle arthralgia with degenerative joint disease and provided work restrictions, he provided no opinion on causal relationship.[8] Thus, his reports are insufficient to establish appellant's claim.

Dr. Yatsushiro noted the history and treatment of appellant's left foot condition, as well as his work duties as a maintenance and mechanic leader. He diagnosed a number of conditions, including severe arthritis of the left ankle involving the subtalar and talar joints, charcot joint of the left ankle, postoperative osteochondritis dissecans stage IV with a loose body, multiple ankle tendinopathies in the medial and lateral position, retrocalcaneal bursitis, enesthopathy of the plantar fascia, peroneal neuropathy with superficial and deep peroneal involvement, L5-S1 sensory radiculopathy, and unrelated cervical spinal stenosis with chronic pain syndrome. Dr. Yatsushiro opined that appellant had persistent peroneal nerve palsy, resulting in a charcot joint or a neural arthritis and that he had unknowingly repetitively injured the left ankle, because of the lack of sensation in the ankle and foot. He explained that appellant's work, involving uneven ground, multiple stairwells, and heavy lifting, were all contributory to his repetitive injuries. In a normal patient, pain was the trigger to stop reinjury, but appellant lacked sensation which predisposing him to reinjure his left ankle and foot a number of times over 20 years. The heavy work, daily lifting, and carrying, crawling, pushing, and stairwells all contributed to his severe arthritis.

The Board finds that Dr. Yatsushiro has not provided sufficient rationale to support that appellant's left ankle conditions were caused or aggravated by his work duties since 1992. Dr. Yatsushiro did not provide a sufficient explanation as to how appellant's work activities caused or contributed to appellant's left ankle conditions. His opinion is therefore insufficient to meet appellant's burden of proof.[9] While Dr. Yatsushiro identified possibly contributory factors in appellant's work duties, he fails to provide any rationale as to how those factors were sufficient to be a contributing causative factor or permanently aggravate appellant's underlying conditions. He also indicated that appellant had participated in nonwork activities such as basketball and surfing. Dr. Yatsushiro also mentioned a prior nonindustrial left foot surgery. However, he provided no explanation differentiating between those nonwork activities, left foot

[7] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[8] *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[9] *See T.H.*, 59 ECAB 388 (2008).

surgery, and appellant's claimed work-related left foot condition. Dr. Yatsushiro mentioned that appellant had a history of chronic cervicalgia and cervical spinal stenosis, but provided no reasonable explanation to rule out those preexisting conditions that may have caused appellant's current left ankle conditions. He also provided no explanation as to whether the left ankle conditions were an aggravation of a previous injury or whether this was a temporary or permanent aggravation.

The diagnostic testing provided is also insufficient to establish appellant's claim as it does not address causation and thus is insufficient to establish the causal relationship between any diagnosed condition and the established work factors.[10]

On appeal, appellant asserts that the medical evidence of record establishes causal relationship of his left ankle conditions and his work duties. As explained above, the evidence of record is insufficient to establish causal relationship. Appellant has the burden of proof to establish causal relationship through the submission of rationalized medical opinion evidence.[11]

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

[10] *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

[11] *John J. Montoya*, 54 ECAB 306 (2003).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish a left ankle condition causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board