United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
	)	**Docket No. 15-528**
and	)	**Issued: June 17, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Mineola, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 9, 2015 appellant, through counsel, filed a timely appeal from an October 27, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 met his burden of proof to establish an occupational disease in the performance of duty.

FACTUAL HISTORY

On February 14, 2014 appellant, then a 47-year-old carrier, filed an occupational disease claim alleging that he developed a right foot condition in the performance of duty. He alleged that delivering parcels of mail, entering and exiting his postal vehicle, walking to and from

[1] 5 U.S.C. § 8101 *et seq.*

customer's residences, and walking up and down stairs caused the need for amputation of his right fourth toe and metatarsal bone, right ankle injury, and aggravation of his diabetes with neuropathy. Appellant stopped work on February 5, 2014 and returned to work on February 10, 2014. He then stopped work again on February 21, 2014.

In a March 25, 2014 statement, the employing establishment controverted appellant's claim because he failed to submit medical evidence establishing causal relationship between a diagnosed condition and his federal employment.

By letter dated April 2, 2014, OWCP notified appellant that no medical documentation was received and advised him of the type of factual and medical evidence needed to establish the claim.

In an April 20, 2014 statement, appellant advised that driving a two-ton truck, delivering parcels of mail up to 100 pounds, climbing in and out of the postal truck, climbing steps to deliver mail, constant weight bearing, and walking under pressure to deliver timely caused or contributed to his injury.

In a February 27, 2014 report, Dr. Harold Brem, a Board-certified surgeon, advised that appellant was under his care for acute osteomyelitis and that he first saw him two days prior for amputation of his right fourth toe and metatarsal head. He noted that appellant had a limb-threatening lesion on his foot caused by long-term diabetes and lots of walking on the job.

In a March 6, 2014 report, Dr. Michael Castellano, a Board-certified surgeon, advised that appellant had a history of diabetes with neuropathy. On physical examination he noted that appellant's right foot had three toes and a wound at the amputation site of the fourth toe. Dr. Castellano further noted that there was minimal edema, derangement of the three remaining toes, a charcot joint in the ankle, and evidence of weight bearing being transferred onto his medial ankle. He diagnosed type 2 diabetes with charcot joint of the right foot. Dr. Castellano opined that appellant's disease was caused and aggravated by long-term activity with walking and microtrauma to his right foot from getting in and out of elevated distances, walking long distances, and carrying heavy packages. He opined that appellant's diabetes and neuropathy would eventually lead to the breakdown of his ankle joint and the skin leading to chronic infections and amputation of the lower leg. Dr. Castellano advised that appellant was not able to maintain the activity level his position required.[2]

In a June 17, 2014 decision, OWCP denied the claim because the medical evidence was insufficient to establish that the diagnosed condition was caused by factors of his employment.

By letter dated July 21, 2014, appellant's counsel requested reconsideration.

In an April 23, 2014 report, Dr. Nick Michelakis, Board-certified in internal medicine and cardiovascular disease, advised that appellant was diagnosed with diabetes at age 38. He noted that in 2009 appellant had his first toe on the right foot amputated, which caused him to

[2] A diagnostic report for an unrelated heart condition was submitted. Also, several chiropractic reports for an unrelated lumbar condition were submitted.

have distorted balance. Dr. Michelakis further noted that in 2009 appellant underwent a coronary artery bypass graph. He advised that appellant's diabetes had not been adequately controlled over the past nine years due to carbohydrate ingestion in his diet and inconsistent follow-up with his medical provider and diabetologist. Dr. Michelakis noted that in early 2014 appellant developed gangrene due to uncontrolled diabetes, which resulted in digit amputation on the right foot. He opined that appellant's recent transmetatarsal foot amputation led to destabilization of his right ankle which likely began in 2009 with his initial first toe amputation. Dr. Michelakis further opined that appellant's unstable ankle, reduced left ventricular ejection fraction of 32 percent, and his uncontrolled diabetes made him unable to perform his duties. He advised that appellant was no longer employed by the employing establishment and was attending to his health full time.

In a June 3, 2014 addendum, Dr. Michelakis opined that appellant's preexisting diabetes and repetitive stress of employment led to his current right foot and ankle injuries. He further opined that repetitive motions, weight bearing, and ambulation brought on and aggravated his condition.

By decision dated October 27, 2014, OWCP denied appellant's claim because the evidence was insufficient to establish that his condition was caused by factors of his employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden 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, that an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[3] 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.[4]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease claim, an employee must submit: (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.[5]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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] The weight of 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.[7]

ANALYSIS

It is not disputed that appellant's job delivering parcels required getting in and out of his work vehicle, walking, and carrying packages. However, the medical evidence is insufficient to establish that these duties caused or aggravated his diagnosed conditions.

In his March, 2014 report, Dr. Castellano advised that appellant had a history of diabetes with neuropathy. He assessed type 2 diabetes with charcot joint of the right foot. Dr. Castellano opined that appellant's disease was caused and aggravated by long-term activity with walking and microtrauma to his right foot from getting in and out of his elevated vehicle, walking long distances, and carrying heavy packages. He advised that appellant could not maintain the type of activity his position required. This report is insufficient to discharge appellant's burden of proof because it lacks reasoning to explain how the work duties identified by Dr. Castellano caused or aggravated appellant's condition. While appellant's amputation occurred during a period of employment, this fact alone does not establish that it was employment related.[8] The need for medical rationale explaining how particular job duties contributed to appellant's condition is particularly important because appellant has preexisting conditions, such as diabetes, that could be the cause of his claimed condition.

In his February 27, 2014 report, Dr. Brem advised that appellant was under his care for acute osteomyelitis and that he recently underwent a procedure to amputate his right fourth toe and metatarsal head. He found that appellant had a limb-threatening lesion on his foot caused by long-term diabetes and walking on the job. Although Dr. Brem partially attributes appellant's condition to walking on the job, he does not provide any medical rationale. The Board has long held that medical opinions not containing rationale to support causal relation are of diminished probative value and generally insufficient to meet appellant's burden of proof.[9] This report is of limited probative value.

In his April 23, 2014 report, Dr. Michelakis advised that in early 2014 appellant developed gangrene as a result of uncontrolled diabetes. This required amputation on the right

[6] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 4.

[7] *James Mack*, 43 ECAB 321 (1991).

[8] *See Phillip L. Barnes*, 55 ECAB 426 (2004) (neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship).

[9] *Carolyn F. Allen*, 47 ECAB 240 (1995).

foot. Dr. Michelakis opined that appellant's recent transmetatarsal foot amputation led to destabilization of his right ankle which had likely begun in 2009 with his first toe amputation. He further opined that appellant's unstable ankle, reduced left ventricular ejection fraction, and his uncontrolled diabetes made him unable to perform his job duties. In his June 3, 2014 addendum, Dr. Michelakis opined that appellant's preexisting diabetes and repetitive stress of employment led to his current right foot and ankle condition. He further opined that repetitive motions, weight bearing, and ambulation brought on and aggravated his condition. Although Dr. Michelakis attributes appellant's condition to factors of his employment, he does not provide medical rationale explaining how employment contributed to appellant's condition, nor does he discuss with any specifics the duties of appellant's job which contributed to or aggravated the diabetic conditions. He did not explain his change of opinion from his earlier April 23, 2014 report where he attributed appellant's condition to uncontrolled diabetes and gangrene. As noted, the need for rationale is particularly important where the evidence shows that appellant has a serious diabetic condition that also contributed to his foot condition.

On appeal appellant's counsel argued that the medical evidence submitted established that his diagnosed condition was causally related to factors of his employment. However, appellant has not submitted medical evidence explaining how the specific work factors caused or contributed to the diagnosed condition. The physician must accurately describe appellant's work duties and also medically explain the process by which these specific duties would have caused or aggravated his condition.[10] Because appellant has not provided such medical opinion evidence in this case, he has failed to meet his burden of proof.

Appellant may submit new evidence or argument as part of a formal 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.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an occupational disease in the performance of duty.

[10] *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 17, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board