

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VICTOR LANE and U.S. POSTAL SERVICE,  
POST OFFICE, Strongsville, OH

*Docket No. 02-1748; Submitted on the Record;  
Issued July 9, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing that he developed a right ankle condition due to factors of his federal employment.

On January 16, 2001 appellant, then a 43-year-old distribution clerk, filed a notice of occupational disease alleging that he sustained nerve damage in his right ankle and foot due to his federal employment. He alleged that the injury was caused by constant standing and carrying parcels and trays of mail. An electromyogram (EMG) study performed on December 22, 2000 showed "electrodiagnostic findings consistent with right superficial peroneal sensory nerve mononeuropathy at the ankle" and indicated that appellant previously injured his right ankle in 1986 and 1990.<sup>1</sup> Dr. Edward H. Gabelman, a Board-certified orthopedic surgeon, stated in a January 23, 2001 report:

"The patient injured his right ankle at work. He has been putting more stress on it which I feel is causing increased pain and aggravating his injury. In addition, recent EMG and nerve conduction tests converted from being normal in the past to showing evidence of some nerve damage probably related to increasing stress on the ankle."

By decision dated April 20, 2001, the Office of Workers' Compensation Programs denied appellant's claim.

By letter dated May 18, 2001, appellant requested an oral hearing.

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<sup>1</sup> The record shows that appellant was working light duty at the time of his alleged injury and contains various testimonials stating that he was working within his restrictions.

Appellant submitted a second report from Dr. Gabelman dated August 29, 2001. Dr. Gabelman stated:

“I reviewed my notes on [appellant]. I evaluated him on January 12, 2001 at which time he complained of a burning in his right ankle. There was no history of any new injury. EMG and nerve conduction tests carried out on December 22, 2000 because of the burning in the right ankle revealed evidence of a right superficial peroneal mononeuropathy.

“As I pointed out, in my opinion there was no injury. I would have to feel however, that the neurological deficit detected on the EMG and nerve conduction tests was in all probability directly related to the original injury to his right ankle.”

In a letter dated January 8, 2002, Dr. Gabelman stated:

“I am really quite confused as to the request in your letter dated January 3, 2002. You have enclosed my August 29, 2001 letter to Donna Kleinhenz in which I indicated that there was no new injury dated January 12, 2001. Again, in my opinion, there was no new injury. The reference to a note given to [appellant] dated January 23, 2001 refers to the patient’s original injury at work, not any new injury. The original injury at work occurred on October 7, 1986. In the note of January 23, 2001, I merely stated that, in my opinion, the increasing stress the patient was putting on the ankle, in all probability, aggravated that condition. It is, however, my understanding that the Department of Labor has totally denied the patient’s original ankle injury and any further injuries.”

By decision dated May 6, 2002, the Office hearing representative affirmed the April 20, 2001 decision.

The Board finds that appellant has not met his burden of proof in establishing that he developed a right ankle condition due to factors of his federal employment.

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>2</sup> has the burden of establishing 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained 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.<sup>3</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.<sup>5</sup>

In the present case, appellant claims that his duties as a clerk aggravated his right ankle and foot conditions. The May 6, 2002 decision indicates that appellant originally injured his right ankle in 1986 and filed a claim which was accepted. In October 1990, he reinjured his right ankle in the employing establishment's parking lot. This claim was also accepted. The two cases were combined and appropriate treatment and compensation benefits were paid. In this instance, appellant submitted medical evidence diagnosing a right ankle condition.

Appellant also submitted a series of reports from Dr. Gabelman who opined that appellant's right ankle condition was not a new injury but was the result of his original employment injury in 1986. Although Dr. Gabelman opined that appellant's condition was related to the 1986 injury, he does not support his statements with medical rationale. Appellant's burden includes providing rationalized medical opinion evidence showing a causal relationship between the claimed condition and the identified employment factors.<sup>6</sup> 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.<sup>7</sup> In this case, Dr. Gabelman concludes that appellant's condition is related to the original injury in 1986 and states that his current employment duties aggravated this condition, yet he does not provide medical rationale to support his statements. The Board has found that a conclusory statement without supporting rationale is of little probative value<sup>8</sup> and is insufficient to discharge appellant's burden of proof. As neither Dr. Gabelman nor any other physician provided a rationalized medical opinion on the causal relationship between appellant's right ankle condition

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<sup>5</sup> *Haydee Martinez*, Docket No. 01-833 (issued October 29, 2001).

<sup>6</sup> *Id.*

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *Marilyn D. Polk*, 44 ECAB 673 (1993).

and his original employment injury, appellant has failed to submit the necessary medical evidence to meet his burden of proof and the Office properly denied his claim.

The May 6, 2002 and April 20, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
July 9, 2003

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

A. Peter Kanjorski  
Alternate Member