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C.S., Appellant)	
)	
and)	Docket No. 08-1771
)	Issued: January 5, 2009
DEPARTMENT OF THE INTERIOR,)	
NATIONAL PARK SERVICE, Asheville, NC,)	
Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

On June 10, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated January 30 and May 15, 2008 denying his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury causally related to factors of his federal employment.

On February 5, 2007 appellant, a 60-year old maintenance mechanic filed an occupational disease claim alleging that he sustained injuries to his right foot in early December 2006. He stated that his right foot became swollen, as a result of remaining in the same position for an extended period of time, during a three-day work-related road trip between Linville, NC

and Lexington, TN. Appellant also indicated that his foot condition might be related to a previous accident in which he twisted his right ankle while operating a government backhoe. He alleged that he first realized that the injury was related to his employment on December 6, 2006.

In a letter dated February 20, 2007, the Office informed appellant that the evidence submitted was insufficient to establish his claim, noting that he had provided no medical report or diagnosis of any condition resulting from the alleged December 6, 2006 incident. It advised appellant to submit details surrounding the alleged incident, as well as a comprehensive medical report from a treating physician, which contained symptoms, a diagnosis and an opinion with an explanation as to the cause of his diagnosed condition.

In a March 15, 2007 statement, appellant indicated that he was required by his employer to drive a pick-up truck from Linville, NC to Lexington, TN in early December 2006. He stated that the swelling in his right foot began on the second day of his three-day trip and that, by the time he returned to Linville, he was limping. Appellant noted that he twisted his right ankle a few years before, when he stepped off a backhoe onto a rock.

Appellant submitted progress notes from Dr. George W. Stano, a podiatrist. Notes dated September 8, 2005 reflected appellant's complaints of pain in the right second and third toes of the right foot, which he stated "hurts all the time." On September 9, 2005 Dr. Stano diagnosed periostitis 2nd met and onychomycosis. Notes dated February 2, 2007 reflected persistent swelling in appellant's right forefoot. Dr. Stano related appellant's reports that he injured his ankle approximately two years before when he jumped off of a backhoe and stepped on a rock. He diagnosed possible PT tendinitis and chronic pain and swelling in the dorsum 2nd and 3rd heads.

By decision dated March 29, 2007, the Office denied appellant's claim on the grounds that he had not established a causal relationship between the diagnosed condition and the claimed work-related events.

On April 18, 2007 appellant requested an oral hearing. In support of his request, he submitted a March 5, 2007 report from Dr. Stano, who diagnosed right Achilles tendinitis. Dr. Stano stated that appellant jumped off a backhoe two years earlier, twisting his ankle when his heel hit a rock. He further stated that appellant "drove to Memphis in December 2006, irritated behind ankle after that, has since resolved."

Appellant submitted April 19, 2007 statements from Jim Nowak, coworker, and Supervisor Kevin Ziemba. Mr. Nowak stated that appellant twisted his right ankle as a result of jumping from a tractor in August 2004. Mr. Ziemba indicated that appellant was sent to Tennessee in December 2006 to pick up stolen government merchandise and that, when he returned from the three-day trip; his right foot was severely swollen. Appellant informed him that the right foot condition was due to an incident which occurred in August 2004, when he twisted his ankle while jumping off a backhoe.

On April 20, 2007 appellant stated that he twisted his ankle when he jumped off a backhoe and landed on a rock on August 16, 2004. He indicated that he did not file a claim at that time because he assumed that it was just a minor sprain.

A hearing was held on December 6, 2007. Appellant testified that his right foot condition was directly related to the three-day drive to Tennessee in December 2006.

By decision dated January 30, 2008, the Office hearing representative affirmed the March 29, 2007 decision, on the grounds that appellant had failed to provide any rationalized medical evidence explaining whether or how his right foot condition was causally related to the claimed work events.¹ On February 14, 2008 appellant requested reconsideration.

Appellant submitted a January 21, 2008 report from Dr. Christa U. Muckenhausen, a treating physician, who provided a medical history, as reported by appellant, reflecting that he had experienced right foot pain and swelling into his ankle since stepping off a backhoe in 2004. She related appellant's report that the symptoms usually occurred after extensive use, "such as recently when he was driving to pick up a four-wheeler in Tennessee. Appellant had to drive extensively with his foot flexed which caused him to have severe pain and swelling in the right foot afterwards." Dr. Muckenhausen diagnosed "status post injury to right foot when stepping off a backhoe in 2004, with strain to ligaments and soft tissue in foot and ankle, with progressive instability and advanced degenerative changes due to normal use of foot and ankle, which have worsened over the years since the initial injury." In response to a question as to whether appellant's condition arose out of his employment, she placed a checkmark in the "yes" box.

By decision dated May 15, 2008, the Office denied modification of its January 30, 2008 decision, on the grounds that appellant had not provided a rationalized medical opinion establishing a causal relationship between his foot and ankle condition and the claimed December 2006 driving activities.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim, including the fact that an injury was sustained in the performance of duty as alleged³ and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴

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

¹ The record reflects that, on April 20, 2007, appellant filed a traumatic injury claim (File No. xxxxxx562) alleging that he injured his right ankle on August 16, 2004 when he jumped from a backhoe. The Office denied the claim by decision dated May 30, 2007. On January 30, 2008 an Office hearing representative affirmed the Office's May 30, 2007 decision.

² 5 U.S.C. §§ 8101-8193.

³ *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and manner alleged. Appellant must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

⁴ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997)

presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the 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 diagnosed condition is causally related to the employment factors identified by the claimant.⁵ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, i.e., medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to claimant's diagnosed condition. To be of probative value, 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

An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.⁷

ANALYSIS

The medical evidence submitted by appellant is insufficient to establish that his right foot and ankle condition was caused or aggravated by the alleged December 2006 employment events. Therefore, he has failed to meet his burden of proof.

Dr. Stano's September 8 and 9, 2005 progress notes reflect appellant's complaints of pain in the right second and third toes of the right foot, and provide diagnoses of periostitis 2nd met and onychomycosis. These reports predate and are therefore not relevant to, the claimed December 2006 driving incident. Additionally, by virtue of their date, they suggest that appellant's right foot condition preexisted the events of December 2006.

On February 2, 2007 Dr. Stano diagnosed possible PT tendinitis and chronic pain and swelling in the dorsum 2nd and 3rd heads, noting that appellant had injured his ankle approximately two years before when he jumped off of a backhoe and stepped on a rock. This report lacks probative value on several counts. First, Dr. Stano's diagnosis of possible PT tendinitis is speculative. Further, the Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis.⁸ Moreover, Dr. Stano did not provide an opinion as to the cause of appellant's foot condition, or even address the alleged December 2006 driving incident. Therefore, this report is of limited probative value.⁹

⁵ *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

⁶ *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

⁷ *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*; *supra* note 4 at 218.

⁸ *See Robert Broome*, 55 ECAB 339, 342 (2004).

⁹ *Michael E. Smith*, 50 ECAB 313 (1999) (Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value).

On March 5, 2007 Dr. Stano diagnosed right Achilles tendinitis. He stated that appellant jumped off a backhoe two years earlier, twisting his ankle when his heel hit a rock. Dr. Stano noted that appellant “drove to Memphis in December 2006, irritated behind ankle after that, has since resolved.” Although he implied that appellant exacerbated a previous ankle injury in 2006, he did not explain the medical process through which his driving activities would have been competent to cause the claimed condition. Medical conclusions unsupported by rationale are of little probative value.¹⁰

In a January 21, 2008 report, Dr. Muckenhausen provided a medical history, as reported by appellant, reflecting that he had experienced right foot pain and swelling into his ankle since stepping off a backhoe in 2004. She related appellant’s report that the symptoms usually occurred after extensive use, “such as recently when he was driving to pick up a four-wheeler in Tennessee. Appellant had to drive extensively with his foot flexed which caused him to have severe pain and swelling in the right foot afterwards.” Dr. Muckenhausen diagnosed “status post injury to right foot when stepping off a backhoe in 2004, with strain to ligaments and soft tissue in foot and ankle, with progressive instability and advanced degenerative changes due to normal use of foot and ankle, which have worsened over the years since the initial injury.” In response to a question as to whether appellant’s condition arose out of his employment, she placed a checkmark in the “yes” box.

Dr. Muckenhausen report is insufficient to establish that appellant sustained a right foot injury as a result of the alleged December 2006 employment events. Most significantly, she did not explain the nature of the relationship between the diagnosed condition and the specific events alleged to have occurred in December 2006.¹¹ Dr. Muckenhausen indicated by placing a checkmark in the “yes” box that she believed appellant’s condition was caused or aggravated by employment activities. However, the Board has held that a mere check mark or affirmative notation in response to a form question on causal relationship is not sufficient to establish a claim.¹² Moreover, although Dr. Muckenhausen related appellant’s belief that his condition was caused by the 2004 backhoe injury and exacerbated by the drive to Tennessee, she did not opine definitively that appellant’s condition was related to a three-day drive in December 2006. The Board notes that Dr. Muckenhausen reference to a “recent” drive to Tennessee is inconsistent with appellant’s factual allegations. For all of these reasons, her report is of diminished probative value.

Appellant expressed his belief that his alleged right foot condition resulted from a three-day drive in December 2006, which required him to maintain his foot in the same position for an extended period of time. However, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹³ Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment

¹⁰ *Willa M. Frazier*, 55 ECAB 379.

¹¹ *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

¹² *See Gary J. Watling*, 52 ECAB 278 (2001).

¹³ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

factors or incidents, is sufficient to establish causal relationship.¹⁴ Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, his belief that his condition was caused by the alleged work-related event is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how his claimed condition was caused or aggravated by the alleged December 2006 employment event, he has not met his burden of proof to establish that he sustained an occupational disease in the performance of duty causally related to factors of employment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 15 and January 30, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 5, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁴ *Id.*