

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

S.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Warner Robins, GA, Employer**

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**Docket No. 13-1551
Issued: December 17, 2013**

Appearances:
Brett E. Blumstein, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 18, 2013 appellant, through counsel, filed a timely appeal from a March 18, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for compensation. Pursuant to the Federal Employees' Compensation Appeals Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.²

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a foot injury causally related to factors of her federal employment.

On appeal, appellant's counsel contends that she submitted medical evidence to establish the causal relationship between her employment duties and her claimed condition.

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal, appellant submitted new medical evidence. However, the Board has no jurisdiction to review this evidence for the first time on appeal.

FACTUAL HISTORY

On April 10, 2012 appellant, then a 47-year-old sales service distribution associate clerk, filed an occupational disease claim alleging right foot pain due to working on her feet for extended periods of time. In an accompanying statement, she described foot pain that started on approximately December 8, 2011 and became worse. Appellant worked on a hard concrete floor all day and did not have the opportunity to sit down except for breaks or lunch. She submitted a statement from Dr. Dallas Morgan, a podiatrist, dated April 12, 2012. Dr. Morgan advised that appellant had chronic ankle/foot pain with swelling and was unable to work for the next week.

By letter dated April 20, 2012, OWCP asked that appellant submit additional evidence in support of her claim.

On June 14, 2012 appellant submitted a portion of an article from a magazine with regard to the impact on workers of standing for long periods of time. She stated that Dr. Stewart told her that her ankle was swollen and that it would never go down as long as she was on her feet all day.

In a report dated May 31, 2012, Dr. Gary Stewart, a Board-certified orthopedic surgeon, assessed appellant with plantar fasciitis and treated her with a flector transdermal patch.

By decision dated July 6, 2012, OWCP denied appellant's claim. It found that the medical evidence was not sufficient to establish a right ankle condition causally related to the accepted work factors.

By letter dated January 30, 2013, appellant, through counsel, requested reconsideration. She submitted a January 21, 2013 note from Dr. Derrick D. Phillips, a Board-certified orthopedic surgeon, who stated that appellant related that her job involved predominantly standing for at least 6 hours a day with a 10 minute break, and that she frequently lifted packages that weighed 20 pounds or more. Dr. Phillips advised that, although appellant's employment did not cause her flatfoot condition, her work activities lead to pain and discomfort. He noted that her other diagnoses included posterior tibial tendinitis, a condition that frequently developed as a result of repetitive physical activities. Based on appellant's work history, the condition could be due to repetitive standing and walking activities or such activities could aggravate the underlying condition.

By decision dated March 18, 2013, OWCP denied modification of the July 6, 2012 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA³ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,⁴

³ 5 U.S.C. §§ 8101-8193.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

including that he is an “employee” within the meaning of FECA⁵ and that she filed her claim within the applicable time limitation.⁶ The employee must also establish that she sustained an injury in the performance of duty as alleged and that disability for work, if any, was causally related to the employment injury.⁷ 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.⁸

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, 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.⁹

The medical evidence required to establish causal relationship is usually rationalized medical evidence.¹⁰ 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.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained a right ankle or foot condition causally related to accepted factors of her federal employment. The medical evidence is insufficient to support causal relation. An award of compensation may not be based on appellant’s belief of a causal relationship.¹² Appellant submitted a portion of a magazine article in support of her claim, but the Board has held that excerpts from publications and medical literature are not of probative medical value in

⁵ See *M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); see also 5 U.S.C. § 8101(1).

⁶ *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O’Donnell*, 7 ECAB 227, 231 (1954); see 5 U.S.C. § 8122.

⁷ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

¹⁰ *D.V.*, Docket No. 13-1114 (issued August 26, 2013).

¹¹ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

¹² *S.R.*, Docket No. 13-932 (issued August 19, 2013).

establishing causal relationship. They do not specifically address the individual claimant's medical situation and work factors.¹³

Neither Dr. Morgan nor Dr. Stewart discussed the nature or extent of appellant's employment activities or attributed her medical condition to her federal employment. Dr. Phillips noted that she had flat feet not caused by her employment, but that her work activities could result in pain or discomfort. He also noted that possible posterior tibial tendinitis could be due to her work activities. The Board finds that Dr. Phillips' opinion is speculative. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.¹⁴ Dr. Phillips failed to provide a full or accurate history of appellant's right foot condition.

Appellant has not submitted sufficient medical opinion evidence to establish causal relationship. The Board finds that she did not meet her burden of proof. Appellant may submit this or any other new evidence or argument with a 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 has not met her burden of proof to establish that she suffered from a foot injury causally related to her federal employment, as alleged.

¹³ *Gloria J. McPherson*, 51 ECAB 441 (2000).

¹⁴ *Ricky S. Storms*, 52 ECAB 349 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 18, 2013 is affirmed.

Issued: December 17, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board