United States Department of Labor
Employees' Compensation Appeals Board

C.C., Appellant	)	
	)	**Docket No. 07-1785**
and	)	**Issued: December 28, 2007**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Grand Rapids, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 25, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated July 17, 2006 and April 10, 2007 which denied her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she developed a bilateral foot, ankle and knee condition while in the performance of duty.

FACTUAL HISTORY

On April 16, 2006 appellant, then a 49-year-old window clerk, filed an occupational disease claim alleging that she developed a bilateral foot, ankle and knee condition while

performing her clerk duties. She became aware of her condition on June 10, 1997 and realized that it was aggravated by her employment on March 16, 2006. Appellant did not stop work.[1]

Appellant submitted an undated statement noting that on June 10, 1997 she injured her left foot at work and since that time experienced persistent foot pain. She advised that in October 2005 she began working as a window clerk and was required to stand eight hours per day which exacerbated her bilateral foot condition. Appellant submitted a March 16, 2006 report from Dr. Patricia Kolodziej, a Board-certified orthopedic surgeon, who advised that appellant's history was significant for a left Lisfranc injury nine years prior for which she underwent surgery and subsequent screw removal. Appellant reported increasing foot pain with her new job that required her to stand all day. She advised that her foot pain worsened when she was on her feet and the pain limited her activity. Dr. Kolodziej noted that appellant underwent surgery for a severed flexor hallucis longus of the left foot in 1985 and two foot surgeries in 1997 for her left Lisfranc injury. She noted findings of antalgic gait favoring the left foot, slightly decreased sensation to light touch over the peroneal nerve, tingling in the saphenous nerve and sural nerve area, normal range of motion for the ankles bilaterally, and normal inversion, eversion, dorsiflexion and heel rises bilaterally. Dr. Kolodziej diagnosed left mid-foot post-traumatic arthritis, onychomycosis bilateral big toes and nerve irritability likely due to cancer medicine.

In a letter dated April 26, 2006, the Office advised appellant of the factual and medical evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant submitted a May 8, 2006 report from Dr. Kolodziej, who diagnosed left foot post-traumatic arthritis. She advised that appellant's left foot arthritis was directly related to the prior Lisfranc fracture sustained at work and opined that post-traumatic arthritis after a Lisfranc fracture dislocation was common.

In a July 17, 2006 decision, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that her work caused her claimed condition.

In a letter dated January 7, 2007, appellant requested reconsideration. She submitted reports from Dr. Allan C. Hoekzema, a Board-certified orthopedic surgeon, dated June 16 to November 24, 1997. He originally treated her for a work-related left foot injury which occurred on June 10, 1997. On June 20, 1997 he performed a reduction and internal fixation of the Lisfranc fracture of the left foot and diagnosed status post open reduction/internal fixation with k-wire fixation of the variant Lisfranc fracture of the left foot. On September 12, 1997 Dr. Hoekzema removed the hardware from appellant's left foot. On January 5, 1998 she returned to regular duty without restrictions. In reports dated March 25 to June 2, 1998, he noted appellant's complaints of left foot pain and diagnosed Lisfranc fracture with residual spur formation and arthritic changes of the left foot, rule out Morton's neuroma, status post Lisfranc fracture with residual pain and discomfort of the left foot, status post open reduction/internal fixation of the left foot, status post removal of hardware of the left foot secondary to open reduction and fixation and onychomycosis of the right great toe. In a report dated August 9,

[1] The record reveals that appellant filed a claim for a left foot injury which occurred on June 10, 1997 which the Office accepted for a Lisfranc fracture of the left foot, File No. 09-0429742. This claim is not before the Board.

2006, Dr. Hoekzema treated appellant for left mid foot post-traumatic arthritis. He advised that a bone scan and computerized tomography (CT) scan of the left foot revealed old post-traumatic and degenerative traumatic changes to the left foot compatible with her injury. Dr. Hoekzema opined that there was no question that appellant's present symptoms related to the traumatic changes from the Lisfranc fracture of the left forefoot. A CT scan of the ankles and feet dated July 31, 2006, revealed an old post-traumatic and degenerative changes. A bone scan of the ankles and feet dated July 31, 2006, revealed increased flow and activity in both tarsal areas, more prominent in the left most likely related to degenerative changes and mild increased activity in the right first metatarsophalangeal joint probably related to degenerative changes.

The employing establishment submitted an e-mail from Gayle L. Stora, manager, dated February 22, 2007, She indicated that appellant was a retail clerk for two months and she did not mention that she developed a foot condition at work.

By decision dated April 10, 2007, the Office denied modification of the July 17, 2006 decision, finding that the medical evidence was insufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 the 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. 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.[2]

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) 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 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

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[3]

ANALYSIS

It is not disputed that appellant's duties as a window clerk included standing for long periods of time. However, she has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment factor and that any alleged bilateral foot, ankle and knee condition is causally related to the employment factors or conditions. On April 26, 2006 the Office advised appellant of the type of medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from an attending physician addressing how specific employment factors may have caused or aggravated her claimed condition.

Appellant submitted a report from Dr. Kolodziej dated March 16, 2006, who treated appellant for left foot and ankle pain and diagnosed left mid-foot post-traumatic arthritis, onychomycosis bilateral big toes and nerve irritability likely due to cancer medicine. She advised appellant's history was significant for a left Lisfranc injury nine years ago which required surgery. Appellant reported increasing foot pain with her new job as a clerk at the employing establishment where she was required to stand all day. However, Dr. Kolodziej appears merely to be repeating the history of injury as reported by appellant without providing her own opinion regarding whether appellant's condition was work related.[4] To the extent that she is providing her own opinion, she failed to provide a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.[5] In another report dated May 8, 2006, Dr. Kolodziej diagnosed left foot post-traumatic arthritis but did not attribute appellant's condition to the employment factors from her current position as a window clerk, rather she opined that her foot arthritis was directly related to the June 10, 1997 work injury which required surgery with screw replacement. Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant submitted reports from Dr. Hoekzema, dated June 16, 1997 to June 2, 1998, who treated appellant for a work-related left foot injury which occurred on June 10, 1997. Dr. Hoekzema diagnosed Lisfranc fracture with residual spur formation and arthritic changes of the left foot, rule out Morton's neuroma, status post Lisfranc fracture with residual pain and discomfort of the left foot, status post open reduction/internal fixation of the left foot, status post removal of hardware of the left foot secondary to open reduction and fixation and onychomycosis of the right great toe. However, these reports are of no value in establishing the claimed aggravation of appellant's foot and other conditions since they predate the time of the claimed condition of March 2006. In a report dated August 9, 2006, Dr. Hoekzema noted

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

[4] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[5] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

treating appellant in 1997 for a work-related Lisfranc fracture of the left forefoot and opined that appellant's present symptoms of left mid foot post-traumatic arthritis relate to the traumatic changes from a Lisfranc fracture. However, he fails to provide a rationalized opinion regarding the causal relationship between appellant's left mid foot post-traumatic arthritis and the factors of employment believed to have caused or contributed to such condition.[6] Rather, he appears to attribute appellant's left foot post-traumatic arthritis to the June 10, 1997 work injury.[7] Therefore, this report is insufficient to meet appellant's burden of proof.

The remainder of the medical evidence, including a CT scan of the ankles and feet dated July 31, 2006 and a bone scan of the ankles and feet dated July 31, 2006 fail to provide an opinion on the causal relationship between appellant's job and her diagnosed conditions of left foot post-traumatic arthritis. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[8] Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she developed a bilateral foot, ankle and knee condition in the performance of duty.

[6] *Id.*

[7] This decision does not preclude appellant from further pursuing her previously accepted left foot condition. *See supra* note 1.

[8] *See Dennis M. Mascarenas,* 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2007 and July 17, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 28, 2007
Washington, DC

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

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

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