

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY L. CUMMINGS and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 01-207; Submitted on the Record;
Issued September 27, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she developed a left or right foot condition in the performance of duty.

On June 5, 2000 appellant, then a 57-year-old letter carrier filed a claim alleging that her right and left foot conditions were employment related. She stated that she first became aware of her condition on April 4, 2000, while walking her mail route.

Accompanying appellant's claim was a narrative statement dated June 5, 2000 and a progress note from Dr. Barry W. Minerof, a podiatrist, dated June 6, 2000. Appellant's narrative statement indicated that she had been having foot problems for several years prior to seeking treatment. Her physician recommended surgery to repair a protruding bone in her foot. The progress note from Dr. Minerof indicated appellant had been treated since April 4, 2000 for pain in both feet. He diagnosed appellant with severe arthritic changes of the first metatarsal joint of both feet and hammertoes of both feet. Dr. Minerof noted appellant's employment duties of standing and walking aggravated her condition. He recommended surgery.

In a letter dated August 11, 2000, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

In response to the Office's request appellant submitted two operative report's dated April 11, 2000 and May 2, 2000; a progress note from Dr. Minerof dated August 31, 2000; and a narrative statement. The operative report dated April 11, 2000 indicated appellant underwent a plantar flexory first metatarsal osteotomy with internal fixation of the right foot; distal interphalangeal joint arthroplasty second digit, right foot; and flexor tenotomy of the second digit, right foot. Dr. Minerof's postoperative diagnosis was hallux limitus, right foot; hammer digit syndrome second digit, right foot; and contracted flexor tendon second digit, right foot.

The operative report dated May 2, 2000 indicated that appellant underwent a tricorrectional first metatarsal osteotomy with screw fixation, left foot; hammertoe correction; and plantar condylectomy second metatarsal head, left foot. Dr. Minerof's postoperative diagnosis was hallux limitus, left foot; hammer digit syndrome second digit, left foot; and plantar flex second metatarsal, left foot. The August 31, 2000 progress note from Dr. Minerof provided a history of appellant's right and left foot conditions and his subsequent treatment. He indicated appellant experienced decreased range of motion of the first metatarsophalangeal joint. Dr. Minerof noted that the cause of appellant's condition was "uncertain but likely due to an elevated first metatarsal." He indicated that the conditions of appellant's employment contributed to her condition, specifically long periods of walking and standing. Appellant's narrative statement indicated she had been delivering mail for 34 years and that her left and right foot conditions were caused by the walking required for her job. She noted that her feet turned purple and that the bones in her feet had eroded due to walking and standing on concrete.

On September 27, 2000 the Office issued a decision and denied appellants claim for compensation under the Federal Employees' Compensation Act.¹ The Office found that the medical evidence was not sufficient to establish that her medical condition was caused by employment factors.

The Board finds that appellant has not met her burden of proof in establishing that she developed a left or right foot condition in the performance of duty.

An employee seeking benefits under the 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.² 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.³

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 appellant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.⁴

In the instant case, it is not disputed that appellant's employment duties required prolonged standing and walking. 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 foot condition is causally related to the employment factors or conditions. On August 11, 2000 the Office advised appellant of the type of medical evidence needed to establish her claim. Appellant submitted several treatment notes from Dr. Minerof. The June 6, 2000 treatment note diagnosed appellant with severe arthritic changes of the first metatarsal joint of both feet and hammertoes of both feet. Dr. Minerof noted appellant's employment duties aggravated her foot condition. However, he did not note a history of the injury he merely noted that appellant's "work of standing and walking aggravated her foot condition. Any prolonged standing or walking would aggravate her condition." The Board has held that a medical opinion based on an incomplete history was insufficient to establish causal relationship.⁵ Further, Dr. Minerof did not include a rationalized opinion regarding the causal relationship between appellant's foot condition and the factors of employment believed to have caused or contributed to such condition.⁶

The only other medical evidence submitted by appellant was a treatment note from Dr. Minerof dated August 31, 2000, which indicated that appellant experienced pain and decreased range of motion of the first metatarsophalangeal joint. However, Dr. Minerof only offered speculative support for causal relationship by opining that the cause of appellant's condition was "uncertain but likely due to an elevated first metatarsal." He further noted that the conditions of appellant's employment contributed to her condition. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.⁷ Dr. Minerof's report did not include a rationalized opinion regarding the causal relationship between appellant's foot condition and the factors of employment believed to have caused or contributed to such condition⁸ nor did he explain how appellant's preexisting arthritis in both feet may have affected her condition. Therefore, this report is insufficient to meet appellant's burden of proof.

⁴ *Id.*

⁵ See *Cowan Mullins*, 8 ECAB 155, 158 (1955).

⁶ See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

⁷ Speculative and equivocal medical opinions regarding causal relationship have no probative value; see *Alberta S. Williamson*, 47 ECAB 569 (1996); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Paul E. Davis*, 30 ECAB 461 (1979).

⁸ *Supra* note 6.

The remainder of the medical evidence including Dr. Minerof's operative reports, fail to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. 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.⁹ 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.¹⁰

The decision of the Office of Workers' Compensation Programs dated September 27, 2000 is affirmed.

Dated, Washington, DC
September 27, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁹ See *Victor J. Woodhams*, *supra* note 3.

¹⁰ With her appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; see 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a).