



employment exposure.<sup>1</sup> Appellant stated that she first became aware of her condition and the fact that it was caused or aggravated by her employment on June 28, 2003. Appellant further reported that her feet began to hurt and continually worsened after she switched from a part-time to a full-time position, which required her to stand 9 to 10 hours per day. Her supervisor indicated that appellant stopped work on May 27, 2004 and returned on June 22, 2004, when the employing establishment modified her duties so that she was able to alternate between sitting and standing.

In support of her claim, appellant submitted a report dated June 14, 2004 signed by Dr. Mark W. Valles, a chiropractor, in which he provided diagnoses of plantar fasciitis, foot strain, cervicobrachial syndrome, myospasm of the cervical erector spinae muscles and multiple cervical sUBLUXATION. Dr. Valles reported appellant's allegation that, in addition to constant foot pain, she experienced throbbing headaches four days each week. Appellant also submitted cervical and left knee x-ray reports, neither of which reflected sUBLUXATION of the spine. The report of the cervical x-ray, dated February 2, 2002, stated that "five views do not demonstrate any fracture, dislocation or prevertebral soft tissue swelling," but that there was "mild kyphosis at C4-C5, and a slight overall tilting of the neck toward the left, which may reflect underlying muscular spasm." The report further indicated mid-cervical disc narrowing; mild posterior spurring; no appreciable uncovertebral joint hypertrophy; and intact neural foramina and facet articulations. The report of appellant's knee x-ray indicated normal soft tissue structures; no evidence of a significant degenerative change or fracture; and a region of increased density within the mid- to distal-third of the left femur, which was likely an enostosis or bone island.

By letter dated June 24, 2004, the Office notified appellant that the information submitted was insufficient to substantiate her claim and requested that she provide within 30 days a detailed description of the employment-related activities that she believed contributed to her condition as well as an explanation from her physician as to how exposure or incidents in her federal employment contributed to her alleged condition. In response, appellant provided another copy of Dr. Valles' report.

By decision dated August 16, 2004, the Office denied appellant's claim for compensation on the grounds that the evidence was not sufficient to establish that the claimed medical condition was related to work-related events.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of her claim, including the fact that an injury was

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<sup>1</sup> The term "fasciitis" is defined as the inflammation of "a sheet or band of fibrous tissue such as lies deep to the skin or forms an investment for muscles and various organs of the body." The term 'plantar' refers to the sole of the foot. *Dorland's Illustrated Medical Dictionary* (30<sup>th</sup> ed. 2003).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

sustained in the performance of duty as alleged,<sup>3</sup> and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup>

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 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.<sup>5</sup> 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 the 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.<sup>6</sup> The Board has consistently held that unsigned medical reports are of no probative value<sup>7</sup> and that any medical evidence upon which the Office relies to resolve an issue must be in writing and signed by a qualified physician.<sup>8</sup> The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.<sup>9</sup>

An award of compensation may not be based on appellant's belief of causal relationship. Neither the 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

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<sup>3</sup> *Joseph W. Kripp*, 55 ECAB \_\_\_ (Docket No. 03-1814, issued October 3, 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 in the manner alleged. He 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).

<sup>4</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

<sup>5</sup> *Michael R. Shaffer*, 55 ECAB \_\_\_ (Docket No. 04-233, issued March 12, 2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

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

<sup>7</sup> *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>8</sup> *James A. Long*, 40 ECAB 538, 541 (1989).

<sup>9</sup> 5 U.S.C. § 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist, and subject to regulation by the secretary." *See Merton J. Sills, supra* note 7.

is sufficient to establish a causal relationship.<sup>10</sup> Furthermore, the Board has held that a diagnosis of “pain” does not constitute the basis for the payment of compensation.<sup>11</sup>

### ANALYSIS

In the instant case, appellant did not provide the factual and medical evidence necessary to establish a *prima facie* claim for a condition arising from the performance of duty. Appellant alleged in her CA-2 claim form that she experienced pain in her feet. Standing alone, appellant’s allegation of pain, coupled with her belief that the condition was caused by factors relating to her federal employment, is insufficient to constitute a basis for the payment of compensation.<sup>12</sup> Neither does the record reflect medical evidence establishing the presence or existence of the condition for which appellant claims compensation.

The only medical evidence submitted in support of appellant’s claim is a report from her chiropractor dated June 14, 2004. In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under 5 U.S.C. § 8101(2). A chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by x-ray to exist.<sup>13</sup> Although Dr. Valles provides a diagnosis of multiple cervical subluxation, there is no x-ray report of record demonstrating a subluxation of appellant’s spine. Therefore, the Board finds that Dr. Valles does not qualify as a physician under the Act and his opinion is of no probative value. Moreover, the Board has held chiropractic opinions to be of no probative medical value on conditions beyond the spine.<sup>14</sup> Accordingly, his opinion regarding appellant’s bilateral foot condition would be of no probative value, even if he met the Act’s criteria. Additionally, any opinion that Dr. Valles might express regarding appellant’s spinal condition would not be relevant to her alleged bilateral foot condition.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the doctor’s opinion, with medical reasons, on the cause of her condition. Appellant failed to submit any medical documentation in response to the Office’s request other than a report from her chiropractor. As Dr. Valles does not qualify as a physician under the Act, there is no probative medical evidence of record supporting that appellant did sustain a diagnosed medical condition or explaining the physiological process by which appellant’s work activities would have caused her claimed condition. Therefore, appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

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<sup>10</sup> *Phillip L. Barnes*, 55 ECAB \_\_\_\_ (Docket No. 02-1441, issued March 31, 2004); *see also Dennis M. Mascarenas*, *supra* note 4 at 218.

<sup>11</sup> *See Robert Broome*, 55 ECAB \_\_\_\_ (Docket No. 04-93, issued February 23, 2004).

<sup>12</sup> *Id.*

<sup>13</sup> *See Kathryn Haggerty*, 45 ECAB 383 (1994).

<sup>14</sup> *See George E. Williams*, 44 ECAB 530, 533 (1993).

**CONCLUSION**

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an injury in the performance of duty, therefore, the Office properly denied her claim for benefits under the Act.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 16, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member