

By decision dated June 12, 2007, the Office denied appellant's claim. Appellant requested reconsideration and submitted additional evidence. By decision dated October 17, 2007, the Office accepted her claim for right foot metatarsalgia.

On September 15, 2008 appellant again requested reconsideration, arguing that her back and left foot conditions should have been accepted because she was experiencing pain in both feet. She alleged that these conditions were consequential injuries. In support of her argument, appellant referenced a September 4, 2007 note in which Dr. Kathleen Fineco, Board-certified in podiatric medicine, reported that "[appellant] experiences severe pronation in her right foot during standing with resultant biomechanical implications affecting her back with resultant pain in this area as well."

By report (Form CA-17) dated July 7, 2008, Dr. Fineco diagnosed pain and provided a list of work restrictions. In a note dated July 7, 2007, she provided additional work restrictions. On February 18, 2008 Dr. Fineco diagnosed right and left foot metatarsalgia. She also diagnosed left foot fajitas. Additionally, Dr. Fineco reported that appellant had subjective secondary lumbar pain directly related to the problems in her feet.

By report dated September 13, 2008, Dr. Jennifer S. Van Vickle, a Board-certified diagnostic radiologist, reported results from a magnetic resonance imaging (MRI) scan of appellant's lumbar spine and diagnosed her with degenerative disc disease and facet joint degenerative joint disease in her lower lumbar spine.

By decision dated December 1, 2008, the Office denied modification of its October 16, 2007 decision.¹

LEGAL PRECEDENT

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.²

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the

¹ On appeal, appellant submitted additional evidence. The Board may not consider evidence for the first time on appeal, which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). *See J.T.*, 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision.) As this evidence was not part of the record when the Office issued either of its previous decisions, the Board may not consider it for the first time as part of appellant's appeal.

² *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.³

ANALYSIS

Appellant contends that her claim should be accepted for a low-back condition and left foot metatarsalgia. She identified stretching, reaching, and continuous standing on a concrete floor for 8 to 10 hours per day as employment factors that caused these alleged conditions. Appellant's burden is to demonstrate, through the production of probative rationalized medical evidence, that the identified employment factors caused her alleged low-back condition and left foot metatarsalgia. As noted, causal relationship is a medical issue. The medical evidence of record is insufficient to establish that appellant sustained a low-back condition and left foot metatarsalgia in the performance of duty.⁴

The medical evidence of record consists of notes and reports signed by Drs. Fineco and Vickle. Dr. Fineco's July 17, 2008 report (Form CA-17) diagnosed pain. Pain is a symptom, not a compensable diagnosis under the Act.⁵ While Dr. Fineco also asserted that appellant's diagnosis is right and left foot metatarsalgia and that stated that "she experience[d] severe pronation in her right foot during standing with resultant biomechanical implications affecting her back ...," she provided no findings on examination, a review of her medical history or rationalized medical opinion explaining how the identified employment factors caused these conditions. Reports lacking a physician's medical opinion concerning causal relationship between a diagnosed condition and identified employment factors are of diminished probative value.⁶ These deficiencies reduce the probative value of Dr. Fineco's reports and notes and, therefore, they are insufficient to satisfy appellant's burden of proof.

Dr. Vickle's report is insufficient to satisfy appellant's burden of proof because she provides no opinion on how the identified employment factors caused the conditions she diagnosed. As mentioned above, reports lacking a physician's medical opinion concerning causal relationship between a diagnosed condition and identified employment factors are of little

³ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ Appellant submitted reports from a physical therapist. Because healthcare providers such as nurses, acupuncturists, physician's assistants and physical therapists are not considered physicians under the Federal Employees' Compensation Act, their reports and opinions do not constitute competent medical evidence. (5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB ___ (Docket No. 06-1564, issued February 27, 2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983). Thus, these reports are of no probative medical value.

⁵ *C.F.*, 60 ECAB ___ (Docket No. 08-1102, issued October 10, 2008) (pain is a symptom, not a compensable medical diagnosis).

⁶ *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). *See also, Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001).

probative value.⁷ Because Dr. Vickle provided no opinion on how the identified employment factors caused degenerative disc disease and facet joint degenerative joint disease in appellant's lower lumbar spine, her report is of little probative value and is insufficient to satisfy her burden of proof.

Appellant argued that her claim should be accepted because her low-back and foot conditions are consequential injuries. The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct.⁸ The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.⁹ It is appellant's burden of proof to establish a consequential injury.¹⁰

The evidence of record is insufficient to meet her burden as well because it lacks a physician's rationalized medical opinion establishing the consequential relationship between these additional conditions and the accepted condition, metatarsalgia in her right foot. None of the medical evidence contains a rationalized medical opinion stating that appellant's alleged low-back condition and metatarsalgia in her left foot resulted from the direct and natural progression of the accepted condition, metatarsalgia in her right foot¹¹ or in the alternative, that the medical treatment she received for the metatarsalgia in her right foot produced these additional alleged conditions.¹²

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that the condition was aggravated by her employment is sufficient to establish causal relationship.¹³ She has not satisfied her burden of proof to establish that she sustained back and left foot conditions in the performance of duty and, therefore, the Office properly denied her claim.

CONCLUSION

The Board finds that appellant has not satisfied her burden of proof to establish that she sustained low-back and left foot conditions in the performance of duty.

⁷ *Id.*

⁸ *Albert F. Ranieri*, 55 ECAB 598 (2004).

⁹ *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

¹⁰ *See Charles W. Downey*, 54 ECAB 421 (2003).

¹¹ *See Bernitta L. Wright*, 53 ECAB 514 (2002).

¹² *Bonnie D. Jefferson*, 34 ECAB 1426 (1983). *See also Melody Friery*, 48 ECAB 525 (1997).

¹³ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board