

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GWENDOLYN M. FREEMAN and U.S. POSTAL SERVICE,  
POST OFFICE, Harrisburg, PA

*Docket No. 98-1605; Submitted on the Record;  
Issued March 9, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that her alleged back and foot conditions were sustained in the performance of duty.

On September 30, 1996 appellant, a 49-year old mail room supervisor, filed an occupational disease claim for benefits, alleging that she had developed a right foot condition and a back condition due to constant walking on a hard concrete surface. In support of her claim, appellant submitted June 14, 1995 and August 30, 1996 reports from Dr. Dee Selmach, a podiatrist; and reports dated July 16 and November 4, 1996 from Dr. Cameron B. Huckell. In his June 14, 1995 report, Dr. Selmach stated that he was currently treating appellant for chronic pain in her right foot subsequent to her December 31, 1994 foot surgery. Dr. Selmach advised that appellant probably had a neuroma with some adhesions in the right second and third interspaces. He recommended that appellant continue minimal weight bearing activities and advised that she should be restricted to a totally sedentary job until she was able to undergo surgery. In his August 30, 1996 report, Dr. Selmach stated that appellant's foot pain was definitely aggravated by weight bearing. He opined that appellant was unlikely to tolerate the extent of weight bearing demanded by her job, which required her to stand on her feet 8 to 10 hours per day, given that she had a painful right foot due to chronic synovitis of the second and third metatarsophalangeal joint and possibly a stump neuroma. Dr. Selmach advised that further pressure on her right foot would aggravate the inflammatory process surrounding these two metatarsophalangeal joints and would increase the swelling between them, causing pressure on nerve endings.

Dr. Huckell examined appellant on the date of his July 16, 1996 report and diagnosed adult scoliosis, with a degenerative lumbar condition below an old scoliotic fusion. He opined that her disease was aggravated by employment, since any repetitive work with any lifting exceeding 10 pounds would accelerate her degenerative spinal condition. In his November 4, 1996 report, Dr. Huckell stated that appellant had been unable to work since his first examination, on February 5, 1996, but opined that she would be able to return to work on

November 4, 1996. He advised appellant to avoid any type of work that was overly repetitive and recommended that she only perform sedentary work, with limited standing and walking or lifting exceeding 10 pounds.

By letter dated December 6, 1996, the Office advised appellant that she needed to submit additional factual and medical evidence in order to establish her entitlement to benefits. The Office specifically asked appellant to submit a medical report from her treating physician describing the cause of her condition, and an opinion as to whether specific employment factors at her employing establishment caused or contributed to her conditions.

By letters dated February 28, 1997, the Office advised Drs. Stelmach and Huckell, respectively, that appellant had been employed in a limited capacity since 1992 and asked them to explain their previous opinions which indicated her conditions had been aggravated by her job as a mail room supervisor, given that she had not been employed in that capacity for several years. Neither Dr. Stelmach nor Dr. Huckell responded to these letters.

By decision dated May 1, 1997, the Office denied appellant's claim on the grounds that the claimed medical conditions were not causally related to specific factors or incidents of employment.

The Board finds that appellant did not meet her burden of proof to establish that her alleged right foot and back conditions were sustained in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing that 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 an 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.<sup>2</sup> 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.<sup>3</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 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 the claimant. The medical evidence required to establish causal relationship is rationalized medical evidence.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.<sup>4</sup>

In the present case, the only medical evidence bearing on causal relationship were the two medical reports from Drs. Stelmach and Huckell, respectively, neither of which provided a rationalized probative medical opinion indicating that her right foot and conditions were causally related to employment factors or conditions. Dr. Stelmach opined in his August 30, 1996 report that appellant's foot pain was definitely aggravated by weight bearing and stated that due to her chronic foot condition, she was unlikely to tolerate the extent of weight bearing demanded by her job, which required her to stand on her feet 8 to 10 hours per day. Dr. Huckell opined in his July 16, 1996 report that appellant's lumbar and scoliotic disease was aggravated by employment, since any repetitive work with any lifting exceeding 10 pounds would accelerate her degenerative spinal condition. Dr. Huckell recommended that appellant should avoid any type of work that was overly repetitive and recommended that she only perform sedentary work, with limited standing and walking or lifting exceeding 10 pounds.

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 his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>5</sup> Causal relationship must be established by rationalized medical opinion evidence. The Office advised appellant of the type of evidence required to establish her claim; however, appellant failed to submit such evidence. The opinions of Drs. Huckell and Stelmach on causal relationship are of limited probative value in that they did not provide adequate medical rationale in support of their conclusions.<sup>6</sup> They did not explain the process through which factors of appellant's employment would have been competent to cause the claimed right foot and back conditions. Moreover, their opinions are of limited probative value for the further reason that they are generalized in nature and equivocal in that they only stated summarily that appellant's conditions were causally related to her employment duties, and that her symptoms appeared to be employment related. Finally, their opinions were apparently based on an inaccurate work history, as appellant failed to inform these two physicians that she had been working in a limited capacity for several years.<sup>7</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> *See Id.*

<sup>6</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>7</sup> *Id.*

Accordingly, as the record contains no probative, rationalized medical evidence establishing a causal relationship between appellant's claimed conditions and factors or incidents of employment, the Office properly denied appellant's claim for compensation.

The decision of the Office of Workers' Compensation Programs dated May 1, 1997 is hereby affirmed.<sup>8</sup>

Dated, Washington, D.C.  
March 9, 2000

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> The Board notes that appellant filed a request for reconsideration of the May 1, 1997 decision with the Office on August 19, 1998, which the Office denied by decision dated November 23, 1998. However, as appellant filed her appeal with the Board on April 29, 1998, the Office's November 23, 1998 decision is null and void; *see Douglas E. Billings*, 41 ECAB 880 (1990).