United States Department of Labor
Employees' Compensation Appeals Board

BETTY J. JAMES, Appellant	)	
and	)	**Docket No. 04-1757**
	)	**Issued: October 21, 2004**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORT SECURITY ADMINISTRATION, Houston, TX, Employer	)	

Appearances:
Betty J. James, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On July 6, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' April 1, 2004 merit decision and December 22, 2003 merit denial of her claim. Under 20 C.F.R §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she sustained bilateral foot and knee conditions in the performance of duty.

FACTUAL HISTORY

Appellant, a 46-year-old baggage screener, filed a Form CA-2 claim for benefits on November 10, 2003 alleging that she had experienced pain in her right knee and right foot causally related to factors of her employment.

On November 21, 2003 the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition and an opinion as to whether her claimed condition was causally related to her federal employment. The Office requested that appellant submit the additional evidence within 30 days.

Appellant submitted a December 2, 2003 Form CA-17 duty status report from Dr. J. Barton Kendrick, a specialist in orthopedic surgery, who diagnosed bilateral knee pain and opined that appellant could work an 8-hour day within the following restrictions: lifting/carrying, intermittently, not exceeding 35 pounds, for no more than 4 hours per day; continuous standing for no more than 6 hours per day; intermittent standing for no more than 2 hours per day; continuous walking for no more than 3 hours per day; intermittent walking for no more than 2 hours per day; continuous standing for no more than 6 hours per day; intermittent kneeling for no more than 1/2 hour per day; intermittent bending/stooping for no more than 2 hours per day; intermittent twisting for no more than 3 hours per day; intermittent pulling/pushing for no more than 2 hours per day; intermittent simple grasping for no more than 3 hours per day; intermittent fine manipulation for no more than 1 hour per day; intermittent reaching above the shoulder for no more than 1/2 hour per day; continuous standing for no more than 6 hours per day; intermittent standing for no more than 2 hours per day; and intermittent operating machinery for no more than 1 hour per day. Dr. Kendricks checked a box indicating that appellant's bilateral knee condition was caused by factors of his employment, as depicted by appellant's history of her condition.

In a December 3, 2003 report, Dr. Bruce Miller, a podiatrist, advised that he was treating appellant for bilateral foot deformation. Dr. Miller diagnosed severe hallux valgus deformation with secondary degenerative joint disease of the metatarsal phalangeal joints. He stated that appellant's pain was increased with prolonged standing and ambulation. Dr. Miller noted that appellant was scheduled for surgical reconstruction to repair her foot deformation.

By decision dated December 22, 2003, the Office denied appellant's claim, finding that she failed to submit medical evidence sufficient to establish that she sustained the claimed knee or foot conditions in the performance of duty.

On February 10, 2004 appellant requested reconsideration.

In a January 7, 2004 report, Dr. Miller stated that examination and x-ray revealed severe hallux abductio, valgus with degenerative arthritis of both feet at the metatarsal joints. He advised that prolonged standing, ambulation, lifting and bending would aggravate these conditions and cause severe pain. Dr. Miller advised that appellant underwent reconstructive surgery on her right foot on December 9, 2003 and stated that the surgery had an expected healing time of eight weeks. He noted that appellant would require the same procedure for her left foot.

In a report dated February 2, 2004, Dr. Kendrick advised that appellant had bilateral knee pain, greater in the left knee, which had been present since June 2003. He stated:

> "[Appellant] gave a history of knee popping, especially with pivoting activities. Her pain was localized in the anterior aspect of the knee as well as along the medial lateral joint lines. At the time of [appellant's] evaluation, she was noted to have mild osteoarthritis, particularly involving the medial compartment, as well as the patellafemoral articulation. Her physical examination was remarkable for tenderness along the medial joint line bilaterally and crepitus throughout range of motion of her knees. In my professional opinion, [appellant's] orthopedic diagnoses include bilateral knee osteoarthritis. I have recommended conservative management and advised her that she should limit her standing and lifting. It is my understanding that [appellant] is a baggage screener at Bush Intercontinental Airport and is required to stand on her feet all day long. In my professional opinion, the standing required by her job could certainly cause 'wear and tear' on the knees which would result in osteoarthritis."

By decision dated April 1, 2004, the Office denied modification of the December 22, 2003 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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.[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) 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 usually rationalized medical 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]

ANALYSIS

The Board finds that appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her claimed bilateral foot and knee conditions to factors of her employment. For this reason, she has not discharged her burden of proof to establish her claim that these conditions were sustained in the performance of duty.

Appellant submitted reports from Drs. Kendrick and Miller, but neither of these physicians provided a probative, rationalized medical opinion that the claimed conditions were causally related to employment factors. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[5] In a December 3, 2003 report, Dr. Kendrick diagnosed bilateral knee pain and outlined restrictions on appellant's work activities. Dr. Kendrick, however, did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed condition. Furthermore, the form report from Dr. Kendrick that supported causal relationship with a checkmark is insufficient to establish the claim, as the Board has held that, without further explanation or rationale, a checked box is not sufficient to establish causation.[6] Dr. Miller diagnosed severe hallux abductio, valgus with degenerative arthritis of both feet at the metatarsal joints. He commented that prolonged standing, ambulation, lifting and bending will aggravate these conditions and cause severe pain and stated that appellant underwent reconstructive surgery on her right foot, a procedure she also required on her left foot. Dr. Miller's opinion, however, is of limited probative value as it does not contain any medical rationale explaining how or why appellant's claimed bilateral foot condition was currently affected by or related to factors of employment.[7] As the reports from Drs. Kendrick and Miller constituted the only evidence appellant submitted in support of her claim, the Office in its December 22, 2003 decision, properly denied her claim for compensation for bilateral foot and knee conditions.

Following the Office's decision, appellant requested reconsideration and submitted additional reports from Drs. Kendrick and Miller. In a February 2, 2004 report, Dr. Kendrick related appellant's history of knee popping, particularly with pivoting activities and reiterated his diagnosis of bilateral osteoarthritis, mostly in the medical compartment and patellafemoral

[4] *Id.*

[5] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[6] *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

[7] *William C. Thomas*, 45 ECAB 591 (1994).

regions. He noted that appellant was required to stand on her feet all day long in her capacity as a baggage screener, which "could certainly cause" wear and tear on the knees, resulting in osteoarthritis. Dr. Kendrick, however, did not describe the etiology of appellant's condition in any detail or describe how her work duties would have been competent to cause the claimed bilateral knee condition. Moreover, his opinion is of limited probative value for the further reason that it is generalized in nature and equivocal in that he only noted summarily that appellant's condition was causally related to factors of her employment. In his January 7, 2004 report, Dr. Miller essentially reiterated his previous findings and conclusions, which were properly rejected by the Office in its December 22, 2003 decision. Accordingly, the reports from Drs. Kendricks and Miller, the only evidence appellant submitted in support of her claim, did not constitute sufficient medical evidence to establish that appellant's claimed bilateral foot and knee conditions were causally related to her employment.

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 relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

The Office advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Consequently, appellant has not met her burden of proof in establishing that her claimed bilateral foot and knee conditions were causally related to her employment.[9]

CONCLUSION

The Board finds that appellant has failed to establish that she sustained bilateral foot and knee conditions in the performance of duty.

[8] *Id.*

[9] Appellant contended that the Office committed error by stating incorrectly in the April 1, 2004 decision that she experienced an "accident" and a "work injury" which she never claimed in her case an occupational disease claim. The Office incorrectly stated in the April 1, 2004 decision that her claim pertained to "shoulder" problems. The fact that the Office erred by misstating these facts constitutes harmless error, as the Office properly found that appellant failed to meet her burden of proof to establish that she sustained bilateral foot and knee conditions in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2004 and December 22, 2003 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: October 21, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member