





## **FACTUAL HISTORY**

On April 13, 2003 appellant, then a 56-year-old tools and parts attendant, filed an occupational disease claim (Form CA-2) for an ulcer underlying the fifth metatarsal head on the dorsal aspect of the left foot.<sup>2</sup> Appellant attributed the ulcer to irritations from wearing required safety shoes and steel “toe cap” shoe covers, in particular from June 13 to 17, 2002. He also attributed the ulcer to prolonged standing and walking from April 8 to 12, 2002 as Duffy Davis, a toolroom foreman, assigned him to issue tools by himself during an inventory. He asserted that his workload was further increased in April 2002 due to an impending inspection. Appellant was off work from June 14, 2002 until approximately October 6, 2002 and again from March 4 to April 20, 2003.

The employing establishment submitted two statements discussing the physical demands of appellant’s position. In an October 22, 2002 letter,<sup>3</sup> Mr. Davis stated that appellant stood from two to three hours and walked four to five hours in each eight-hour work shift. Appellant was assigned to issue tools by himself from April 8 to 11, 2002 requiring combined standing and walking for three-minute periods up to four-and-a-half hours a day, with rest breaks between transactions.<sup>4</sup> Mr. Davis asserted that appellant was provided adequate assistance. In an April 24, 2003 letter, Royce Fisher, appellant’s supervisor, stated that appellant received appropriate accommodations.<sup>5</sup> He confirmed that appellant was required to wear steel-toed safety shoes or steel toe caps.

In support of his claim, appellant submitted medical reports from Dr. Lee W. Chu, an attending Board-certified family practitioner. In June 17, 2002 reports,<sup>6</sup> Dr. Chu noted appellant’s history of diabetes mellitus, severe peripheral neuropathy and morbid obesity. In late 2001, appellant developed an ulcer under the fifth metatarsal head while wearing a cast to treat a preexisting ulcer. Dr. Chu noted appellant’s account of standing at work “about 60 to 70 percent of the time” from April 8 to 12, 2002 “because they were short handed.” He opined that the ulcers were “mainly a consequence of his severe diabetic neuropathy aggravated by his weight bearing. However, on balance it would be hard to see a direct cause and [sic] relationship between his work weight bearing and his current infection.”

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<sup>2</sup> In a May 7, 2003 letter, the Office advised appellant that the medical record was insufficient to establish his claim. The Office requested that appellant submit additional, clarifying evidence, including a comprehensive report from his treating physician explaining how and why factors of his federal employment would cause or contribute to the claimed left foot condition. Appellant responded by May 7, 2003 letter reiterating his previous account of events, noting that he tried not to spend too much time on his feet.

<sup>3</sup> This statement was originally submitted pursuant to appellant’s file No. 14-2009193 for a left foot ulcer. File No. 14-2009193 is not before the Board on the present appeal.

<sup>4</sup> Mr. Davis calculated that on April 8 and 10, 2002 appellant performed three-minute tool transactions for a total of approximately four-and-a-half hours and on April 9 and 11, 2002 between two and three hours. Appellant was off work on April 12, 2002.

<sup>5</sup> The precise nature of appellant’s work restrictions prior to April 8, 2002 are not evident from the record.

<sup>6</sup> These reports were originally submitted regarding file No. 14-2009193. This claim is not before the Board on the present appeal.

In April 1 and May 2, 2003 reports, Dr. Chu diagnosed a neurogenic left foot ulcer “with work aggravation” related to appellant’s duties as “a parts attendant.” He released appellant to light duty as of April 21, 2003 with standing and walking limited to one hour per day and use of a protective boot and crutches. In a May 8, 2003 report, Dr. Chu explained that appellant’s neurogenic left foot ulcer was “severely work aggravated” as “since April 8, 2002, because of being short-staffed at work, he [was] ... on his feet for prolonged periods of time. This caused repeat breakdown of the previously ulcerated area underneath the bottom of his left fifth metatarsal,” leading to a chronic infection requiring surgical debridement on June 17, 2002. As the ulcer had not yet healed, appellant still required minimal “weight bearing on his left foot.”<sup>7</sup> In a June 4 report, Dr. Chu diagnosed a work-related “[p]ressure ulcer left foot” and reiterated on July 2, 2003 that the ulcer was aggravated by appellant’s work.<sup>8</sup>

By decision dated July 25, 2003, the Office denied appellant’s claim on the grounds that causal relationship was not established. The Office found that Dr. Chu’s opinion was of diminished probative value as he did not explain why he first negated causal relationship in his June 17, 2002 reports, then supported causal relationship from April 1, 2003 onward. The Office also found that Dr. Chu’s opinion was of diminished probative value as it was based on appellant’s inaccurate account of his duties during April 2002.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>9</sup> 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 filed within the applicable time limitation; that an injury was sustained while 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>10</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>11</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) 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,

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<sup>7</sup> Wound care clinic treatment notes dated from May 22 to June 12, 2003 indicate that the ulcer improved with decreased weight bearing.

<sup>8</sup> Appellant also submitted wound care clinic notes dated June 13, 2002 and June 23 and 26, 2003. As these notes were not signed or reviewed by a physician, they cannot constitute medical evidence in this case. *Ricky S. Storms*, 52 ECAB 349 (2001) (the Board held that a medical opinion, in general, can only be given by a qualified physician).

<sup>9</sup> 5 U.S.C. §§ 8101-8193.

<sup>10</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>11</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

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 generally rationalized medical opinion evidence. 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>12</sup>

### ANALYSIS

Appellant alleged that he developed a left foot ulcer due to standing and walking at work, weight bearing activities from April 8 to 12, 2002 and to wearing required safety shoes. The Office accepted as factual that appellant was assigned to work the toolroom window by himself from April 8 to 10, 2002 and that these duties required intermittent walking and standing. However, the Office denied appellant's claim, finding that the medical evidence was insufficient to establish a causal relationship between work factors and the claimed left foot ulcer.

In support of his claim, appellant submitted medical reports from Dr. Chu, an attending Board-certified family practitioner.

Dr. Chu's opinion is equivocal regarding the critical issue of causal relationship. In June 17, 2002 reports, Dr. Chu commented that it was "hard to see a direct cause and [sic] relationship between [appellant's] work weight bearing and his current infection." However, in reports from April 1 to July 2, 2003, Dr. Chu opined that the left foot ulcer was caused or aggravated by weight bearing at work. Thus, Dr. Chu both supports and negates a causal relationship between the left foot ulcer and work factors. He offered no explanation as to why his opinion changed. Since he had earlier related appellant's condition to his severe diabetic neuropathy, it was important for Dr. Chu to explain with clear medical rationale how the work activities caused the ulcer and infection. Therefore, his opinion is of diminished probative value.<sup>13</sup>

Appellant also attributed his condition, in part, to wearing required steel-toed safety shoes or steel "toe caps." Mr. Fisher, appellant's supervisor, confirmed in an April 24, 2003 letter that appellant was required to wear such shoes or toe caps in the performance of duty. The Board finds that Mr. Fisher's letter is sufficient to establish as factual that appellant was required to wear steel-toed safety shoes or toe caps. However, appellant did not submit medical evidence addressing whether wearing safety shoes or toe caps caused or aggravated the claimed foot condition. Dr. Chu's reports do not mention the safety shoes or toe caps. As set forth above, a claimant generally must provide rationalized medical evidence to establish a causal relationship

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<sup>12</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>13</sup> *Ricky S. Storms*, *supra* note 8 (medical opinion supporting causal relationship must not be speculative or equivocal).

between an identified work factor and a claimed condition.<sup>14</sup> As appellant has not submitted such evidence, he has not established that wearing safety shoes or steel toe caps caused or aggravated any medical condition.<sup>15</sup> Also, appellant did not submit evidence corroborating his account of additional work duties in April 2002 due to an impending inspection. Thus, he has not established this allegation as factual.<sup>16</sup>

**CONCLUSION**

The Board finds that the Office properly denied appellant's claim as he submitted insufficient medical evidence to establish a causal relationship between factors of his federal employment and development of the claimed left foot ulcer.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 25, 2003 is affirmed.

Issued: September 21, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>14</sup> *Solomon Polen*, *supra* note 12.

<sup>15</sup> *Id.*

<sup>16</sup> *Trudy A. Scott*, 52 ECAB 309 (2001) (to establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence).