

**United States Department of Labor
Employees' Compensation Appeals Board**

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EDILBERTON FUENTES, Appellant)	
)	
and)	Docket No. 05-1923
)	Issued: December 5, 2005
U.S. POSTAL SERVICE, POST OFFICE,)	
Daly City, CA, Employer)	
)	

Appearances:
Edilberton Fuentes, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On September 16, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' July 5, 2005 merit decision. 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 met her burden of proof in establishing that her claimed right foot condition was sustained in the performance of duty.

FACTUAL HISTORY

On April 20, 2005 appellant, a 52-year-old letter carrier, filed a Form CA-2 claim for benefits, alleging that she developed a right foot condition caused by factors of her employment.

In support of her claim, appellant submitted reports dated March 23 and 30, 2005 from Jerry Collins, a physician's assistant.

By letter dated May 3, 2005, 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 reports dated March 23 and 30, April 6 and 21 and May 2, 2005 from Mr. Collins, and reports dated March 23, April 6, May 17 and June 1, 2005 from Dr. Ofer Eibschutz, a Board-certified orthopedic surgeon. In his May 25, 2005 report, Dr. Eibschutz diagnosed right foot plantar fasciitis and noted that, on examination, appellant had right foot tenderness over the lateral plantar aspect of the right heel, with no edema or ecchymosis. He stated that appellant related that she developed right foot pain four to five weeks ago after wearing rubber boots over her regular shoe.

By decision dated July 5, 2005, the Office denied appellant's claim, finding that appellant failed to submit medical evidence sufficient to establish that she sustained the claimed right foot condition in the performance of duty.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 physician's rationalized opinion on the issue of whether there is a causal relationship between the

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).

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

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed right foot condition and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁵

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.⁶ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

The Board finds that appellant has failed to submit any medical evidence containing a rationalized, probative report which relates her claimed right foot condition to factors of her employment. For this reason, she has not discharged her burden of proof to establish that this condition was sustained in the performance of duty.

Appellant submitted several brief reports from Dr. Eibshutz, but none of these reports provided a probative, rationalized medical opinion that the claimed right foot condition was causally related to employment factors. Dr. Eibshutz diagnosed plantar fasciitis in appellant's right foot and stated that appellant had recently developed the condition within the previous four to five weeks after wearing rubber boots over his regular shoe; however, he did not submit a medical report containing a probative, rationalized medical opinion that the claimed right foot condition was causally related to employment factors. Dr. Eibshutz's reports are therefore of limited probative value as they do not contain any medical rationale explaining how or why appellant's claimed right foot condition was currently affected by or related to factors of employment.⁷ Although Dr. Eibshutz diagnosed plantar fasciitis in appellant's right foot caused by employment factors, he failed to provide a probative, rationalized medical opinion to establish that appellant's right foot condition was causally related to any of her work duties.⁸ The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and

⁴ *Id.*

⁵ See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁶ *Id.*

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

⁸ The reports from Mr. Collins do not constitute medical evidence, as reports from a physician's assistant do not constitute medical evidence pursuant to 5 U.S.C. § 8101(2).

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.⁹ Appellant failed to submit an opinion which sufficiently described the medical process through which her employment would have been competent to cause the claimed right foot condition. The Office therefore properly found that appellant did not sustain a right foot condition in the performance of duty.

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 right foot condition was causally related to her employment. The Board therefore affirms the Office's July 5, 2005 decision.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish that her claimed right foot condition was sustained in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 5, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: December 5, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

⁹ See *Anna C. Leanza*, 48 ECAB 115 (1996).