



long periods of time on concrete floors. She stated that she first became aware that her condition was caused by her employment on April 2, 2002.

By letter dated August 7, 2002, the Office advised appellant that the information submitted was insufficient to establish her claim and advised her to provide, among other things, a medical report stating a diagnosis and a rationalized medical opinion as to how the conditions of her employment caused or contributed to her condition. In response, appellant submitted a personal statement on August 12, 2002 describing her job duties and the history of her condition, as well as two medical slips signed by Dr. Thomas C. Boldry, a podiatrist, stating that appellant was incapacitated for 12 weeks due to “partial Achilles tendon tear.”

By letter dated August 13, 2002, the employing establishment challenged appellant’s claim stating that appellant had accepted a limited-duty job offer that accommodated her restrictions.

By decision dated September 10, 2002, the Office denied appellant’s claim on the grounds that the medical evidence was insufficient to establish that her condition was causally related to her employment.

Appellant submitted a note dated September 26, 2002 from Dr. Boldry asking that appellant be excused from work until September 30, 2002 and that her schedule be restricted to four hours per day until October 30, 2002.

On November 7, 2002 appellant requested an oral hearing. In an attending physician’s report dated October 24, 2002, Dr. Boldry provided a diagnosis of Achilles tendinitis. He stated that a magnetic resonance imaging (MRI) scan performed on appellant showed changes at the insertion of the left Achilles tendon. In response to the question as to whether appellant’s condition was caused or aggravated by her employment activity, Dr. Boldry checked the “yes” box, underlined the word “aggravated, and added that “standing tends to prolong recovery.”

At the July 30, 2003 hearing, appellant identified long periods of standing on cement floors as the employment factor allegedly causing the problem with her Achilles tendons.<sup>1</sup> She testified that she has permanent restrictions as a result of a prior work-related injury which provide that she is to walk only on wood or tile. Appellant alleged that the work restrictions were honored until her division was relocated in 1999. She indicated that on April 2, 2002 she noticed that “each step that [she] took was really painful in the bottom of [her] feet and it felt like [she] was walking on tacks and that they were on fire.” The hearing representative advised appellant to submit within 30 days a signed medical report which provided a rationalized medical opinion that appellant’s standing for significant periods of time caused her condition.

Appellant submitted unsigned progress notes from Dr. Boldry dated May 20, 2002 through October 30, 2002, which reflected appellant’s complaints of standing on her feet eight hours per day and a diagnosis of Achilles tendinitis. She also submitted a signed note dated September 9, 2003 whereby Dr. Boldry stated that appellant suffered from chronic Achilles

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<sup>1</sup> Appellant stated that her work in the “nixie” unit sorting through trays and tubs of mail required standing on a concrete floor to pitch mail.

tendinitis, which limited her walking to 250 yards at a time, and that for six months she would require a wheel chair to assist her from the entrance of the building to her workstation.

By decision dated November 18, 2003, the hearing representative set aside the Office's September 10, 2002 decision and remanded the case for further development of the medical evidence, stating that when an uncontroverted inference of causal relationship is raised, the Office is obligated to further develop the evidence and request additional information from an attending physician, if appropriate.

The Office referred appellant, together with the entire medical record and accepted statement of facts, to Dr. Dale D. Dalenberg, a Board-certified orthopedic surgeon, for a second opinion examination, which occurred on January 23, 2004. According to the statement of accepted facts submitted to Dr. Dalenberg, appellant had several previous work-related claims, including claims accepted for ganglion cyst of synovium; dislocation of the right wrist; cervico-thoracic strain; and inhaling paint fumes. In a report February 13, 2004, Dr. Dalenberg provided a diagnosis of bilateral Achilles tendinosis and opined that appellant's condition was not caused or aggravated by factors of her employment. He observed that she was ambulating with a normal gait; had no limitation on range of motion; was neurovascularly intact in the feet; and was mildly tender over the Achilles tendons at midsubstance, but was not having any palpable swelling or changes in the tendon to palpation. Dr. Dalenberg explained that appellant had a degenerative condition of insidious onset over several years which would likely have proceeded along a similar natural history even without the alleged employment factors. He distinguished appellant's degenerative condition of tendinosis from tendinitis, which is a traumatic or inflammatory condition. In Dr. Dalenberg's interview with appellant, she stated that she had been able to perform her modified-duty job since she had been given floor mats. Dr. Dalenberg noted that the duties outlined in the job description for appellant's modified review clerk job were very "light," requiring appellant to lift no more than 10 to 15 pounds and allowing her to spend most of the day sitting with a chair provided. He opined that she was able to perform the modified job as described.

By decision dated March 1, 2004, the Office denied appellant's claim, finding that the rationalized medical opinion of Dr. Dalenberg represented the weight of the medical evidence and that appellant had failed to establish that her condition was causally related to factors of her federal employment.

On March 11, 2004 appellant submitted a letter disagreeing with the contents of Dr. Dalenberg's report and objecting to the examination process. By letter dated March 12, 2004, the Office advised appellant that, in order for her claim to be reviewed, it was necessary for her to follow the appeal rights which had been outlined for her in conjunction with the March 1, 2004 decision. On March 9, 2004 appellant submitted a request for reconsideration. In support of her request, appellant submitted a personal statement dated March 17, 2004 stating her objections to Dr. Dalenberg's report. She alleged that she never told Dr. Dalenberg that she was given a modified job or that she had gradual onset of symptoms; that she was not examined by Dr. Dalenberg nor given a range of motion test; that Dr. Dalenberg neither showed her any of the Office's paperwork nor reviewed the paperwork she took in; that she sat in his waiting room for four hours; that she does not have a normal gait, but rather walks with a limp; that Dr. Dalenberg was not given the entire job description; and that she does not have a degenerative condition.

On September 17, 2004 the Office denied appellant's request for reconsideration on the grounds that she neither raised substantive legal questions nor included new and relevant evidence.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged,<sup>3</sup> and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</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 the 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 diagnosed condition is causally related to the employment factors identified by the claimant.<sup>5</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed was caused by the accepted injury.<sup>6</sup> 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 that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joseph W. Kripp*, 55 ECAB \_\_\_\_ (Docket No. 03-1814, issued October 3, 2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained an injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined). Occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q) ("[o]ccupational disease or [i]llness" defined).

<sup>4</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

<sup>5</sup> *Michael R. Shaffer*, 55 ECAB \_\_\_\_ (Docket No. 04-233, issued March 12, 2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

<sup>6</sup> *Roger Williams*, 52 ECAB 468, 472 (2001).

<sup>7</sup> *John W. Montoya*, 54 ECAB \_\_\_\_ (Docket No. 02-2249, issued January 3, 2003).

Medical conclusions unsupported by rationale are of little probative value.<sup>8</sup> An award of compensation cannot be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The medical evidence does not establish that appellant's diagnosed condition was causally related to her employment. The medical evidence presented establishes the existence of the condition for which compensation is claimed, namely bilateral Achilles tendinosis, as diagnosed by Dr. Dalenberg. Appellant also identified standing for long periods of time on a cement floor as the only employment factor alleged to have caused or contributed to the occurrence of her condition. However, appellant has failed to provide medical evidence establishing a causal relationship between the employment factor identified and her condition of bilateral Achilles tendinosis.

The medical evidence of record submitted by appellant included several work excuse slips; Dr. Boldry's unsigned progress notes dated May 20 through October 30, 2002; an attending physician's report dated October 24, 2002; and a note signed by Dr. Boldry dated September 9, 2003. Dr. Boldry's progress notes reflected appellant's complaints of standing on her feet eight hours per day. On his attending physician's report when asked whether appellant's condition was caused or aggravated by her employment activity, Dr. Boldry checked the "yes" box, underlined the word "aggravated," and added that "standing tends to prolong recovery." Dr. Boldry's note signed on September 9, 2003 reflected that appellant suffered from chronic Achilles tendinitis which limited her walking to 250 yards at a time and that she would require a wheel chair for six months to assist her from the entrance of the building to her workstation. None of these medical reports offered a rationalized medical opinion causally relating the diagnosed condition of Achilles tendinitis to appellant's employment duties.

Dr. Boldry did not provide a rationalized opinion, supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the established factor of employment.<sup>10</sup> As the Board has consistently held, his unsigned treatment notes are of no probative value.<sup>11</sup> Dr. Boldry did not explain how standing on cement floors could be solely responsible for appellant's condition. Unsupported by rationale, his medical conclusion, demonstrated by a checkmark in a "yes" box, is of little probative value.<sup>12</sup> Furthermore, the Board has held that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between a claimed condition and

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<sup>8</sup> *Willa M. Frazier*, 55 ECAB \_\_\_\_ (Docket No. 04-120, issued March 11, 2004).

<sup>9</sup> *John D. Jackson*, 55 ECAB \_\_\_\_ (Docket No. 03-2281, issued April 8, 2004); *see also Michael E. Smith*, 50 ECAB 313, 317 (1999).

<sup>10</sup> *John W. Montoya*, *supra* note 7.

<sup>11</sup> *Merton J. Sills*, 39 ECAB 572 (1989).

<sup>12</sup> *Willa M. Frazier*, *supra* note 8.

employment factors.<sup>13</sup> The hearing representative offered appellant an opportunity to obtain further clarification from her treating physician as to a causal relationship between her condition and the alleged employment factor. She failed to produce the required medical evidence.

The Board finds that the weight of the medical evidence rests with the well-rationalized opinion of Dr. Dalenberg, a Board-certified orthopedic surgeon, to whom appellant was referred for a second opinion examination and who reviewed the statement of accepted facts prepared by the Office and determined that appellant did not have an employment-related condition. The Board has noted that the weight of medical evidence is determined by its reliability, probative value and convincing quality, taking into consideration the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the level of the analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>14</sup>

The Board has carefully reviewed Dr. Dalenberg's February 13, 2004 report and notes that it is reliable, probative and convincing. Prior to reaching his conclusions, Dr. Dalenberg extensively detailed appellant's factual and medical history and reported the findings of his examination of appellant. Dr. Dalenberg had the benefit of a statement of accepted facts which delineated appellant's previously accepted work-related claims and the restrictions of appellant's modified-duty job. Moreover, Dr. Dalenberg provided a proper analysis of the factual and medical history and the findings on examination and reached conclusions regarding appellant's condition which comported with this analysis.

In his report, Dr. Dalenberg provided a diagnosis of bilateral Achilles tendinosis and opined that appellant's condition was not caused or aggravated by factors of her employment. Providing a medical rationale for his determination, Dr. Dalenberg explained that appellant had a degenerative condition of insidious onset over several years, which would likely have proceeded along a similar natural history even without the alleged employment factors. He distinguished appellant's degenerative condition of tendinosis from tendinitis, which is a traumatic or inflammatory condition. He recounted in detail that she was ambulating with a normal gait; had no limitation on range of motion; was neurovascularly intact in the feet; and was mildly tender over the Achilles tendons at midsubstance, but was not having any palpable swelling or changes in the tendon to palpation. In Dr. Dalenberg's interview with appellant, she stated that she had been able to perform her modified-duty job since she has been given floor mats. Dr. Dalenberg noted that the duties outlined in the job description for appellant's modified review clerk job were very "light," requiring appellant to lift no more than 10 to 15 pounds and allowing her to spend most of the day sitting with a chair provided. He opined that she was able to perform the modified job as described. His report was thorough and well reasoned.

Appellant submitted a personal statement raising her objections to Dr. Dalenberg's report, alleging that she never told Dr. Dalenberg that she was given a modified job or that she had gradual onset of symptoms; that she was not examined by Dr. Dalenberg nor given a range of motion test; that Dr. Dalenberg neither showed her any of the Office's paperwork nor

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<sup>13</sup> *Ernest St. Pierre*, 51 ECAB 623, 626 (2000).

<sup>14</sup> *See Maurissa Mack*, 50 ECAB 498, 502 (1999); *see also Melvina Jackson*, 38 ECAB 443, 449-50 (1987).

reviewed the paperwork she took in; that she sat in his waiting room for four hours; that she does not have a normal gait, but rather walks with a limp; that Dr. Dalenberg was not given the entire job description; and that she does not have a degenerative condition. She has stated repeatedly that her condition was caused by the employing facility's requirement that she stand for long periods of time on cement floors. However, an award of compensation cannot be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.<sup>15</sup> Appellant is required to submit the medical evidence necessary to establish a causal relationship. In that she has not done so, appellant has failed to meet her burden of proof.

### **LEGAL PRECEDENT -- ISSUE 2**

The refusal of the Office to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) did not constitute an abuse of discretion.

Under 20 C.F.R. § 10.606 a claimant may obtain review of the merits of his claim by written request to the Office identifying the decision and specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

“(i) Showing that the Office erroneously applied or interpreted a point of law; or

“(ii) Advancing a point of law or fact not previously considered by the Office; or

“(iii) Constituting relevant and pertinent evidence not previously considered by the Office.”<sup>16</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs 10.606(b)(2)(i) through (iii) of that section will be denied by the Office without review of the merits of the claim.<sup>17</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that the Office's refusal to reconsider its merit decision of March 1, 2004 did not constitute an abuse of discretion.

In order for appellant to obtain review of the merits of her claim, it was necessary for her either to show that the Office erroneously applied or interpreted a point of law; to advance a point of law or fact not previously considered by the Office; or to submit relevant and pertinent evidence not previously considered by the Office.<sup>18</sup>

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<sup>15</sup> *John D. Jackson*, 55 ECAB \_\_\_\_ (Docket No. 03-2281, issued April 8, 2004); *see also Michael E. Smith*, 50 ECAB 313, 317 (1999).

<sup>16</sup> 20 C.F.R. § 10.606.

<sup>17</sup> 20 C.F.R. § 10.608(b).

<sup>18</sup> *Supra* note 16.

By letter dated March 9, 2004, appellant requested reconsideration of the Office's March 1, 2004 denial of her claim, citing numerous objections to Dr. Dalenberg's examination and report and restating her belief that her condition was caused by employment factors. By decision dated September 17, 2004, the Office denied appellant's request for reconsideration based upon her failure either to submit new and relevant evidence or to raise substantive legal questions. Appellant offered no additional medical evidence, or new evidence of any nature whatsoever. She did not allege that the Office erroneously applied or interpreted a point of law, nor did she advance a point of law or fact or submit relevant and pertinent evidence not previously considered by the Office. Appellant's disagreement with Dr. Dalenberg's report is insufficient to create a conflict of medical opinion. The Board finds that appellant's unsupported allegations that Dr. Dalenberg's examination was improper lacks credibility and that his report is thorough, well reasoned and based on a full review of the medical evidence of record and an examination of appellant. Appellant had the opportunity to submit additional medical evidence in support of her request for consideration but chose not to do so. Because appellant did not meet any of the requirements of section 10.608(b), the Office was within its rights to deny her request for reconsideration.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty; and the Office did not abuse its discretion in refusing to reopen appellant's case for further consideration on the merits of her claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated September 17 and March 1, 2004 are affirmed.

Issued: February 28, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member