



## **FACTUAL HISTORY**

On July 20, 2004 appellant, a 48-year-old registered nurse, filed a claim for a recurrence of disability of an injury sustained on October 25, 2001.<sup>1</sup> She indicated that she sustained pain in her right foot and ankle as a result of the walking she performed in her federal employment. She noted that constant walking aggravated her symptoms from an alleged October 25, 2001 employment injury. The Office treated appellant's recurrence of disability claim as a new claim for occupational disease and assigned File No. 062126857. By letter dated November 15, 2004, the Office requested that appellant submit further information.

By letter dated November 30, 2004, appellant indicated that she has continued to experience pain in the arches, metatarsals, toes and ankles of both feet and permanent swelling in the right foot since her alleged injury of October 25, 2001. She contended that her claim was not a new claim but an ongoing condition as a result of the October 25, 2001 injury.

Appellant submitted medical evidence in support of her claim. These included records from the Central Mississippi Medical Center with regard to treatment on October 28, 2001, including a report of an x-ray showing no acute fracture. In a December 7, 2004 report, Dr. Robert Woodruff, a podiatrist, indicated that he treated appellant for the October 25, 2001 injury to her right foot. He noted that the injury had stabilized but that appellant was told of possibly future problems including swelling and pain from the injury. Appellant also submitted progress notes for her treatment from October 27, 2001 through June 3, 2002.

By decision dated January 3, 2005, the Office denied appellant's occupational disease claim, as the medical records did not contain a firm diagnosis or a physician's opinion as to how her current foot symptoms were caused by walking at work.

By letter dated February 8, 2005, appellant requested reconsideration and submitted a January 31, 2005 medical report from Dr. Walter Shelton, a Board-certified orthopedic surgeon, who indicated that appellant had a "Right side remote Lisfranc injury with synovitis of her Lisfranc joint right and an Achilles contracture. Left side overload MTP [metatarsophalangeal] with simply syndactylies and an Achilles contracture as well as plantar fasciitis." In office notes dated February 21 and March 28, 2005, Dr. Shelton indicated that appellant was improving.

In a decision dated June 8, 2005, the Office denied modification of the January 3, 2005 decision. The Office found that the medical evidence did not address causal relationship to the implicated work factors.

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<sup>1</sup> The Board notes that, although the original claim form is not contained in the case record, the Office accepted that on October 25, 2001 appellant sustained a contusion of the right ankle and foot while walking to a conference in the performance of her duties as a registered nurse. The Office assigned File No. 062057077.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</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>3</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>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 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. The medical opinion 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>5</sup>

Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>6</sup>

## ANALYSIS

In the instant case, the Office properly treated appellant's claim as one for a new occupational disease.<sup>7</sup> On appellant's claim form, she clearly indicated that her condition was

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 150 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *Solomon Polen*, 51 ECAB 341 (2000); *see also Michael E. Smith*, 50 ECAB 313 (1999).

<sup>6</sup> 20 C.F.R. § 10.5(x). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1) (May 1997).

<sup>7</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (January 1995), which states that a recurrence of disability does not include "(e) A condition which results from a new injury, even if it involves the same part of the body previously injured, or by renewed exposure to the causative agent of a previously suffered occupational disease."

aggravated by constant walking at work. As such, appellant's alleged condition was due to new exposures at the work environment, and was not a spontaneous recurrence.<sup>8</sup>

No physician related appellant's condition to the walking she did as part of her job. Dr. Woodruff merely noted that the October 25, 2001 employment injury could result in future problems including swelling and pain. Dr. Shelton noted appellant's 2001 injury but did not address how her current condition was caused or contributed to by walking at work. The issue of causal relationship is a medical one and must be resolved by probative medical evidence.<sup>9</sup> As the medical evidence submitted to the record does not establish that appellant's condition was caused or aggravated by the walking required in her federal job, appellant has not established her entitlement to benefits.

### **CONCLUSION**

Appellant has not met her burden of proof to establish that she sustained an injury causally related to factors of her federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 8 and January 3, 2005 are hereby affirmed.

Issued: September 22, 2005  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>8</sup> 20 C.F.R. § 10.5(x).

<sup>9</sup> *Luis M. Villanueva*, 54 ECAB \_\_\_\_ (Docket No. 03-977, issued July 1, 2003).