

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

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M.S., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
North Metro, GA, Employer )

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**Docket No. 06-974  
Issued: December 18, 2006**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 20, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 14, 2005 merit decision denying her occupational disease claims. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of appellant's claim.

**ISSUES**

The issues are: (1) whether appellant met her burden of proof to establish that she sustained any medical conditions in the performance of duty; and (2) whether appellant has established an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On May 17, 2005 appellant, then a 47-year-old postal clerk, filed an occupational disease claim, alleging that her work duties aggravated her post-polio syndrome, plantar fasciitis; degenerative disc disease and depression. She first became aware of her condition and its relationship to her work on April 29, 2005. The employing establishment noted that appellant

stopped work after a mediation meeting on April 30, 2005 and returned to work on May 23, 2005 as a personnel clerk.

In a separate statement, appellant advised that childhood polio caused left-side paralysis and affected her left leg. As a result, she had a weakened left foot and leg muscles and, at times, utilized a left leg brace and cane to help her walk. Appellant received injections for left foot plantar fasciitis and an entrapped foot. She also contended that her degenerative disc disease at L3 and L4 had progressed and she had a history of depression since 1972. In her job, she worked at the sales counter and the box section since October 2, 2004. Appellant alleged that she was not allowed to sit at the sales window and she had to sit on a rest bar and stand without floor mats in the box section. She advised that sitting on the rest bar and standing for long periods of time without a chair, floor mats or a flat topped cart caused pain in her foot, leg and back and exacerbated the weakness in her foot and legs. Appellant alleged that she was harassed by management anytime she sat down and was told to go on break or to lunch or to work the sales window. Appellant also alleged that the employing establishment failed to provide reasonable accommodations in the way of a chair, cart or floor mats.

Appellant submitted copies of x-ray reports of her lumbosacral spine and clinical studies. A May 11, 2006 medical report from Dr. Craig M. Chebuhar, a Board-certified orthopedic surgeon, noted progressive axial back pain consistent with lumbar facet syndrome.

In a May 4, 2005 medical report, Dr. Bhavin Mehta, a podiatrist, noted appellant's history of post-polio syndrome and provided diagnoses due to prior surgeries of the left ankle for treatment of a foot deformity associated with post-polio syndrome. He noted appellant's complaints of worsening left ankle pain after extended amounts of weight bearing and ambulation. Dr. Mehta diagnosed plantar fasciitis with heel spur syndrome of the left foot, entrapment neuritis of the medial and intermediate dorsal cutaneous nerves of the left ankle, footdrop deformity with mild pes cavus and left foot plantar fat atrophy.

In a May 4, 2005 medical report, Dr. Pierre-Richard Theard, Board-certified in physical medicine and rehabilitation, noted seeing appellant for polio and back pain that she stated was a result of standing all day at work. He noted that the x-rays done by appellant's primary care physician showed advanced degenerative disc at L3-4 with some facet atrophy at the same level. Dr. Theard opined that this condition explained appellant's back pain during standing and hyperextension postures.

In an undated report, received by the Office on July 11, 2005, Dr. Scott H. Friedman, a clinical psychologist, noted that appellant sought psychotherapy for depression and anxiety. Appellant attributed her condition to her work situation, where requested accommodations due to her documented physical disability were not granted. Accommodations were requested since October 2, 2004. Dr. Friedman noted appellant's history of depression which dated back to 1972. Upon examination, he diagnosed major depressive disorder, recurrent and adjustment disorder with depressed mood. He opined that appellant's work situation resulted in an adjustment disorder with depressed mood which exacerbated an underlying depressive disposition. Dr. Friedman explained that the failure to accommodate her disability and the reported conflict with her supervisor adversely impacted her emotional health.

In an undated medical report received by the Office on July 11, 2005, Dr. Frank Steele, Jr., a Board-certified family practitioner, addressed appellant's numerous medical conditions. He stated, "as [appellant] has stated in her report above, a person suffering from both post-polio syndrome and degenerative disc disease who is not properly accommodated in their work environment can experience a worsening in their discomfort from their conditions. This prolonged pain can certainly impact a person's psychological health and contribute to the development of depression."

In a letter dated August 17, 2005, the Office advised appellant that the information submitted was insufficient to establish her claim and additional factual and medical evidence, including a comprehensive medical report, were needed. In response, appellant submitted copies of medical reports already of record. In a September 21, 2005 report, Dr. Friedman addressed the issue of recurrent major depression. He explained that clinical evidence and research supported that depression can and often does recur and that work-related stress was a factor that could trigger depression. Dr. Friedman reiterated his opinion that appellant's employer did not accommodate her documented disability which resulted in a recurrence of long-standing depressive disposition which had been in remission for many years.

By decision dated December 14, 2005, the Office denied appellant's claim finding that the medical evidence of record failed to establish that appellant's conditions were causally related to factors of her federal employment.

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

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</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 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.<sup>2</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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>3</sup>

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>4</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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>5</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>6</sup>

### ANALYSIS -- ISSUE 1

Appellant alleged that her work duties of prolonged standing and sitting on a rest bar resulted in the aggravation of several physical conditions. The record contains medical evidence of treatment for post-polio syndrome, plantar fasciitis, degenerative disc disease of the lumbar spine and an emotional condition.

The Board finds that appellant failed to meet her burden of proof to establish that her work duties aggravated her physical conditions. Dr. Theard stated that appellant's advanced degenerative disc at L3-4 and facet atrophy explained her back pain while in standing and hyperextension postures. However, he noted that appellant reported a history of standing all day at work. Dr. Theard did not provide a reasoned opinion regarding how her degenerative disc disease was caused or aggravated by standing in her employment.<sup>7</sup> He failed to provide a rationalized opinion regarding the causal relationship between appellant's back condition and the factors of employment believed to have caused or contributed to her condition.<sup>8</sup> Therefore, his report is insufficient to meet her burden of proof.

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<sup>3</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>4</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>5</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>6</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>7</sup> See *Roy L. Humphrey*, 57 ECAB \_\_\_\_ (Docket No. 05-1928, issued November 23, 2005) (medical opinion evidence must be 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); *William A. Archer*, 55 ECAB 674 (2004) (when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurt too much to work without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation).

<sup>8</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

Dr. Steele opined that a person with both post-polio syndrome and degenerative disc disease, not properly accommodated in their work environment, could experience a worsening in discomfort and that prolonged pain could impact a person's psychological health and contribute to the development of depression. To the extent that Dr. Steele is attributing a worsening of appellant's preexisting physical conditions to the lack of accommodations in her work environment, his report contains no medical rationale on causal relationship. Dr. Steele addressed causal relationship in general and did not explain how appellant's conditions were aggravated by her employment. Medical reports containing little medical rationale on causal relationship are of diminished probative value.<sup>9</sup> Additionally, Dr. Steele's opinion appears to have merely repeated appellant's belief regarding the cause of her condition.<sup>10</sup> Thus, this report is insufficient to establish appellant's claim.

The remainder of the medical evidence fails to provide an opinion on the causal relationship between appellant's job and her medical conditions and the factors of employment believed to have caused or contributed to her conditions. The x-ray report of the lumbosacral spine does not contain an opinion regarding the cause of the condition. Dr. Chebuhar failed to provide an opinion on the cause of appellant's lumbar facet syndrome. Dr. Mehta provided no opinion on whether appellant's activities at work caused or aggravated the various conditions pertaining to appellant's left foot and ankle. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>11</sup> For this reason, this evidence is insufficient to meet appellant's burden of proof.

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.<sup>12</sup> Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied her claim for compensation.

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

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.<sup>13</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-

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<sup>9</sup> *Mary E. Marshall*, 56 ECAB \_\_\_\_ (Docket No. 04-1048, issued March 25, 2005).

<sup>10</sup> *See William A. Archer*, *supra* note 7.

<sup>11</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>12</sup> *See Dennis M. Mascarenas*, *supra* note 6.

<sup>13</sup> 5 U.S.C. §§ 8101-8193.

in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>14</sup>

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.<sup>15</sup> This burden includes the submission of a detailed description of the employment factors or conditions, which the employee believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>16</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>17</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>18</sup>

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

Appellant alleged that the lack of accommodation to allow her to sit resulted in a recurrence of depression. She submitted medical evidence that she had an emotional condition as a result of not being accommodated for her documented disability. The Office, however, failed to develop the emotional condition aspect of her claim. In this respect, appellant has alleged administrative error and harassment by management. It is an elementary principle of workers' compensation law, which the Board has often reiterated, that the Office is required to make findings of fact and a statement of reasons regarding the material facts of the case.<sup>19</sup> In the present case, the Office has made no specific fact findings regarding the claimed emotional condition. On remand, the Office, after such further development as it deems necessary, should issue an appropriate decision on appellant's emotional condition claim.

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<sup>14</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>15</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>16</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>17</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>18</sup> *Id.*

<sup>19</sup> See *Beverly Dukes*, 46 ECAB 1014, 1017 (1995).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained an employment-related physical condition. The Board finds that the case is not in posture for decision regarding whether appellant sustained an employment-related emotional condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 14, 2005 decision of the Office of Workers' Compensation Programs is affirmed as to appellant's physical condition. The case is remanded for further action consistent with this decision pertaining to appellant's emotional condition.

Issued: December 18, 2006  
Washington, DC

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

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board