



In duty status reports dated June 28 and July 29, 2005, Dr. Victor Arena, a podiatrist, noted the history of injury and reported swelling and mild right foot pain.

On December 19, 2005 the Office notified appellant that the evidence submitted was insufficient to establish her claim and advised her to provide additional documentation, including a firm diagnosis and a physician's opinion as to how her injury resulted in the diagnosed condition.

In a January 17, 2006 report, Dr. Arena and Dr. Gerard Furst, a podiatrist, reported that appellant was first seen on June 28, 2004 for a mildly swollen ankle. The podiatrists diagnosed a "chip fracture, dislocation of the accessory bone or a moderate sprain of the foot" based upon an x-ray obtained that day. A subsequent examination on July 29, 2005 revealed "a palpable ganglion cyst" which had not been present at the prior examination. They noted that they were unable "to determine whether the accessory bone was dislodged or that there was a chip fracture" as the x-ray taken on July 29, 2005 revealed "no noted bone healing." However, the podiatrists stated that they could not "rule out that the ganglion cyst was either caused by or aggravated by the trauma."

By decision dated February 6, 2006, the Office found that appellant had established that the June 3, 2005 work incident occurred, *i.e.*, that she slipped and fell on a piece of candy. However, the Office denied appellant's claim finding that she failed to provide a rationalized medical report to support a causal relationship between the accepted event and a diagnosed condition.

In a January 3, 2006<sup>1</sup> duty status report, Dr. Arena noted the history of injury and diagnosed possible chip in the foot and tendinitis.

In a letter dated July 13, 2006, appellant's counsel requested reconsideration and argued that the January 17, 2006 report by Dr. Furst was sufficient to support appellant's claim.

By decision dated October 2, 2006, the Office denied modification of the February 6, 2006 decision.<sup>2</sup>

In a letter dated October 2006, appellant's counsel requested reconsideration and submitted a September 22, 2006 report by Dr. Richard J. D'Agostino, a treating Board-certified orthopedic surgeon, who noted that appellant twisted her ankle when she slipped and fell on a piece of candy at work on June 3, 2005. A physical examination revealed swelling on the right foot along the dorsal midfoot area and full range of ankle motion. Dr. D'Agostino noted, "a palpable bony prominence in the midfoot area as well, which is mildly tender." He stated that "the injuries described above appear to be acute-on-chronic condition, all consistent with the injury of June 3, 2005."

In a December 12, 2006 progress note, Dr. D'Agostino referred to a left knee injury.

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<sup>1</sup> The podiatrist noted the year "2005" on the form, which appears to be a typographical error.

<sup>2</sup> The Office noted that appellant had a claim pending in case number 022502232 for a traumatic injury on May 17, 2005 when she tripped while walking.

By decision dated January 12, 2007, the Office denied modification of the October 2, 2006 decision.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act<sup>3</sup> provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>4</sup> The phrase sustained while in the performance of duty is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.<sup>5</sup>

An employee seeking benefits under the Act has the burden of proof to establish 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>7</sup> An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.<sup>8</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

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

<sup>6</sup> *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *See Paul Foster*, 56 ECAB \_\_\_\_ (Docket No. 04-1943, issued December 21, 2004); *see also Katherine J. Friday*, 47 ECAB 591 (1996).

<sup>8</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>9</sup>

### **ANALYSIS**

The Office accepted that appellant slipped and fell while in the performance of her duties on June 3, 2005. The Board finds, however, that appellant has not met her burden to establish a causal relationship between the accepted employment event and appellant's diagnosed conditions. Drs. Arena and Furst diagnosed a chip fracture on June 28, 2005 and then diagnosed a palpable ganglion cyst based upon an examination the following day. On January 3, 2006 Dr. Arena noted a possible chip fracture and tendinitis. Dr. D'Agostino diagnosed a swelling or palpable bony prominence on the right foot. While Drs. Arena, Furst and D'Agostino provided various diagnoses, their reports are devoid of any explanation as to how the diagnosed conditions were caused or contributed to by the accepted June 3, 2005 employment event of slipping and falling. The medical evidence of record lacks a firm medical diagnosis of appellant's right foot condition. Moreover, there is rationalized medical opinion by a treating physician explaining how the accepted employment incident was competent to have caused any of the listed diagnoses. Appellant has not established fact of injury.

The Board finds that appellant has not established that she sustained a right foot injury causally related to the employment incident of June 3, 2005.

### **CONCLUSION**

The Board finds that appellant has not established that she sustained an injury in the performance of duty on June 3, 2005 as alleged.

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<sup>9</sup> *John W. Montoya*, 54 ECAB 306 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 2, 2006 and January 12, 2007 are affirmed.

Issued: August 10, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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