

prematurely returned to work from a preexisting foot condition and was required to stand eight hours a day on concrete floors.

Appellant had right foot surgery on November 3, 2000, which included osteotomy of the right fourth metatarsal and hammertoe arthroplasty of the second and third digits. Dr. Robert I. Neufeld, a podiatrist, performed additional surgery on March 14, 2001, which included a bunionectomy, excision of the right tibial sesamoid for sesamoiditis and hammertoe arthroplasty of the left second toe and right fourth and fifth toes. In a note dated June 19, 2001, Dr. Neufeld stated that appellant had been disabled since November 3, 2000 indicating that she had multiple surgeries to her feet and delayed healing due to complications. He indicated that appellant could return to work July 5, 2001 without restrictions. Appellant returned to work on July 1, 2001.

On April 30, 2002 Dr. Neufeld noted that appellant had severe pain in her right foot after returning to work and working on concrete floors. He indicated that the foot had not healed properly. Dr. Neufeld stated that the toes were bent out of position and that the claimant had developed painful corns and calluses on her right foot. His physical examination revealed multiple subluxations and deformities of the right foot including: severe recurrent hallux valgus deformity, subluxation and deformity of the 2nd, 3rd, 4th and 5th digits of the right foot and painful IPKs under the metatarsal head of the right foot. Dr. Neufeld's assessment was severe osseous deformities in the right forefoot, work-related injury from ambulation on a concrete floor, heel spur in right foot and excessive standing. He recommended reconstructive surgery, and indicated that the healing process would take six to eight weeks.

Dr. Neufeld completed an attending physician's report (Form CA-20) on June 3, 2002. Based upon an x-ray and a physical examination, he indicated that appellant's implants and bones had shifted causing severe deformity as a result of standing eight hours daily on concrete floors in order to do her work. He stated that appellant's right foot required reconstruction because the toes were misaligned and out of position. Dr. Neufeld also stated that appellant's right foot had valgus deformity, dislocation of the 2nd, 3rd, 4th and 5th toes, and a heel spur. He further noted that the previous surgical results were "ruined" as a result of returning to work. Dr. Neufeld noted that appellant had not been medically discharged or cleared to return to full-time duty and that appellant was pressured to return against medical advice.

On July 2, 2002 Dr. Neufeld stated that appellant needed corrective surgery. He reported that the surgery to the right foot would consist of: correction of the deformed toes, open reduction of the dislocations on the metatarsal phalangeal joints, osteotomy of hallux valgus with internal fixation; osteotomies of the 3rd and 4th metatarsal, and resection of heel spur deformity as well as metatarsal surgery requiring internal fixation with screws and pin. Dr. Neufeld also reported that, when appellant returned to work, "light duty" was recommended, but this recommendation conflicted with her current job requirements. In a report dated July 8, 2002, he stated that, because of continuous impact of appellant's right foot on a concrete floor, she sustained multiple injuries each day at work and these injuries made it medically necessary to remove appellant from even light-duty work and place her on medical disability.

By letter dated August 8, 2002, the Office requested that Dr. Kenneth Falvo, a Board-certified orthopedic surgeon, perform a second opinion examination.

Dr. Falvo performed a second opinion examination on August 22, 2002 and filed a report on August 27, 2002. On examination, he reviewed appellant's medical history and the Office's statement of accepted facts. Dr. Falvo diagnosed multiple hammer deformities of the right foot healed, status post bunionectomy right foot healed and splaying of the right forefoot. He reported that appellant had a mild partial disability for prolonged walking and standing activities, and noted that she should avoid kneeling, squatting and lifting heavy objects greater than 20 pounds on a repetitive basis. Otherwise, appellant was cleared to return to work on a full-time basis. Dr. Falvo noted that the prior multiple surgical procedures had failed to control the forefoot pain in the right foot and recommended orthotics and orthopedic shoe modification to relieve her symptoms. He did not believe that further surgery to the foot would be helpful.

In a supplemental report dated September 23, 2002, Dr. Falvo clarified that he was not able to determine whether additional surgery would alleviate the pain in appellant's right foot. He further stated that her right foot condition was not caused by walking on concrete floors. However, Dr. Falvo advised that appellant's foot symptoms may be aggravated from working on concrete floors.

By decision dated October 17, 2002, the Office, based on Dr. Falvo's report, denied appellant's claim, finding that the medical evidence was insufficient to demonstrate that appellant's condition resulted from factors of her federal employment.

By letter dated November 5, 2002, Dr. Neufeld responded to Dr. Falvo's report stating that there was a direct causal relationship between appellant's employment and the injuries to her right foot. He noted that Dr. Falvo limited appellant to lifting 20 pounds and stated that she was required to lift 20 to 30 pounds daily in the performance of her duties, thus aggravating her condition. Dr. Neufeld disagreed that appellant's condition resulted in "a degree of disability." Instead, he expressed his opinion that appellant was severely disabled. Dr. Neufeld also disagreed with Dr. Falvo that appellant could return to duty without surgery.

In a November 27, 2002 report, Dr. Daniel J. Roche, a podiatrist, opined that standing on hard surfaces at work had aggravated appellant's condition. He stated that excessive pressure on the foot caused inflammation and derangement of the foot.

On August 5, 2003 an oral hearing was held before an Office hearing representative. By decision dated December 4, 2003, the Office hearing representative found a conflict in medical opinion between Dr. Neufeld and Dr. Falvo. Accordingly, the hearing representative set aside the Office's October 17, 2002 decision for referral to an impartial medical specialist.

By letter dated January 13, 2004, the Office referred appellant to Dr. Robert Dennis, an orthopedic surgeon, for an impartial examination. Dr. Dennis reviewed appellant's medical records and the Office's statement of accepted facts. In a report dated January 22, 2004, Dr. Dennis noted that both the right and left feet were symmetrical and had similar deformities and that the right foot had returned to its original deformities after numerous surgeries. He diagnosed appellant as status post nine complex surgical procedures to her right foot (including repeat surgeries for recurring deformities), dysfunctional right foot, abnormal sensation and loss of motion of the toes, instability of the foot, deformity of the foot requiring special shoe wear and pes planus. Dr. Dennis found that additional surgery would not help her condition. He did

not find a causal relationship between appellant's walking on concrete floors during the performance of her job and her foot condition. Dr. Dennis noted that appellant's work activities would not have affected one foot more than the other. He stated that she had adequate time to recover from her March 14, 2001 surgery before returning to work on July 1, 2001. Dr. Dennis also noted that appellant's condition was congenital and recurred even when she was not working. He concluded that her work did not contribute to the worsening of her right foot condition.

By decision dated March 9, 2004, the Office denied appellant's claim. It found the weight of medical opinion to be represented by Dr. Dennis.

A hearing was held before an Office hearing representative on December 2, 2004.

Dr. Neufeld performed additional surgery on March 31, 2004 which included arthrodesis of the 3rd and 4th digits of appellant's right foot with K-wire fixation.

On February 16, 2005 the Office hearing representative remanded the case and instructed the Office to amend the statement of accepted facts to include, among other information, that appellant underwent several surgeries to her right foot beginning in 1998/99 and that from January 12 to June 5, 2002 she used 272 hours of leave and was often on change-of-schedule status doing manual letters from a sitting position. The hearing representative noted that appellant stopped working on July 2, 2002. He requested that the Office obtain a supplemental report from Dr. Dennis indicating whether the revised statement of accepted facts altered his medical opinion.

In the amended statement of accepted facts, the Office noted that appellant was not required to walk consistently on concrete. Instead, her work area around her machine was surrounded, since 2001, by anti-fatigue mats made of a durable shock absorbing rubberized fabric.¹ From January 12 to June 5, 2002, appellant worked less than 20 hours at her regular assignment. In addition, the Office reviewed Dr. Neufeld's notes which were submitted to the hearing representative on January 17, 2005. They reflect that appellant had a history of noncompliance with postsurgical instructions resulting in additional trauma to her right foot including infection and tearing of sutures.

By supplemental report dated May 20, 2005, Dr. Dennis stated that the new information reinforced his conclusion and that his opinion on causal relationship was not changed by the additional facts. He reviewed the additional medical records from appellant and noted that Dr. Neufeld recorded a long history of noncompliance by appellant. Dr. Dennis stated the fact that appellant did not continuously work on cement floors further weakened her claim. He again found that her right foot condition was not caused or aggravated by her federal employment.

By decision dated June 2, 2005, the Office denied the claim based on the medical reports of Dr. Dennis.

¹ The work areas around the machines were covered by these mats. However, the remaining spaces were covered by concrete.

An oral hearing before the Office's Branch of Hearings and Review was conducted on December 20, 2005. By decision dated March 1, 2006, the hearing representative affirmed the June 2, 2005 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of a 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 compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.

To establish that an injury was sustained in the performance of duty in an occupational disease claim,³ an employee must submit the following: (1) medical evidence establishing the presence or existence of a condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition; and (3) medical evidence establishing that the employment factors identified by the employee were the proximate cause of the condition or illness, 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 employee.⁴

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence. 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 an employee's diagnosed conditions and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed conditions and the specific employment factors identified by the employee.⁵

Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary of

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ An occupational disease or illness means a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection, continued or repeated stress or strain or other continued or repeated conditions or factors of the work environment. *William Taylor*, 50 ECAB 234 (1999); *see also* 20 C.F.R. § 10.5(q).

⁴ *Donna L. Mims*, 53 ECAB 730 (2002).

⁵ *Id.*

Labor shall appoint a third physician who shall make an examination.⁶ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁷

ANALYSIS

In this case, the issue is whether appellant's right foot condition is causally related to factors of her federal employment. The Board finds that appellant has not met her burden of proof to establish her claim.

Dr. Neufeld, appellant's attending podiatrist, noted that previous surgeries were performed to alleviate appellant's right foot condition. He opined that her right foot was aggravated after she returned to work in July 2001 due to standing and walking on concrete floors. In a June 3, 2002 attending physician form, Dr. Neufeld diagnosed valgus deformity, dislocation of the 2nd, 3rd, 4th and 5th toes, and a heel spur. Dr. Falvo, a physician, appointed by the Office, found that appellant's right foot condition was not aggravated by her employment. He disagreed with Dr. Neufeld's assertion that appellant's right foot conditions were aggravated by standing or walking on concrete floors and the need for additional surgery. In order to resolve the conflicting opinions of Dr. Neufeld and Dr. Falvo, the case was referred to Dr. Dennis, an impartial medical specialist, for a medical examination pursuant to section 8123(a) of the Act.⁸

Dr. Dennis performed a physical examination of appellant, a review of her medical records, and a review of the two statements of accepted facts supplied by the Office. He stated that appellant had bilateral foot deformities, and that standing or working on cement floors would not have affected one foot different than the other. Dr. Dennis stated that appellant's conditions were congenital and attributable to the aging process and the genetic composition of her feet. He suggested that appropriate footwear would protect the foot from hard surfaces. Dr. Dennis further noted that the claimant's conditions recurred during periods when she was not working on cement floors despite her corrective surgery. He noted a history of noncompliance by appellant with postsurgical instructions. Dr. Dennis stated that appellant had adequate time to recover from surgery and did not return to work prematurely. He concluded that, based upon his examination of appellant and review of the records, that returning to work did not worsen her condition, or cause the need for additional surgery.

The Board finds that the special weight of the medical evidence, represented by the comprehensive report and addendum of Dr. Dennis which is based on complete and accurate factual and medical background plus his findings upon physical examination of appellant, establishes that appellant's claimed right foot condition was not aggravated by circumstances of her employment. Instead, her conditions are congenital and surgical recovery was at least

⁶ 5 U.S.C. § 8123(a); *see also* *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁷ *See* *Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

⁸ 5 U.S.C. § 8123(a).

partially impaired by appellant's failure to comply with Dr. Neufeld's instructions. The opinion of Dr. Dennis is well rationalized and, as such, is given special weight.⁹

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained an aggravation of her right foot conditions while in the performance of duty, causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 31, 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

⁹ Appellant challenged the appointment of Dr. Dennis by the Office. However, there is no evidence in the record that the appointment was not made within the Office's established protocols.