

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

C.H., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Capital Heights, MD, Employer)

**Docket No. 07-933
Issued: July 17, 2007**

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 February 14, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' January 3, 2007 merit decision. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that her left ankle arthritis was sustained in the performance of duty.

FACTUAL HISTORY

On September 18, 2005 appellant, a 49-year-old mail clerk, filed a Form CA-2 occupational disease claim, alleging that she developed an arthritis condition in her left ankle caused by factors of her federal employment. In an August 18, 2005 report, Dr. Patrick A. Noel,

Board-certified in orthopedic surgery, opined that appellant had arthritis in her left ankle which was aggravated by her working posture. He stated:

“[Appellant] was seen by me ... on June 21, 2005 for evaluation of chronic swelling in the left ankle. This swelling was first noted at work in 1991 after a bout of prolonged sitting at a rest bar with her weight on her legs, thereafter walking and standing became difficult especially sitting and casing the mail for long hours at a stretch.

“[Appellant] suffered a fracture of the left ankle in 1975 but did well until 1991. Since then she has had repeated episodes of pain and swelling aggravated by sitting at the rest bar. On examination the left ankle showed 2 degrees of plantar flexion versus 12 degrees on the opposite side. There was anterior and lateral tenderness in the left ankle with a 1+ effusion. There is a palpable bone spur on the lateral left ankle.”

Dr. Noel recommended periodic sitting breaks for 10 minutes every 2 hours and an ergonomic chair with back and arm rests.

By letter dated October 5, 2005, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and an opinion as to whether her condition was causally related to her federal employment. The Office requested that appellant submit the additional evidence within 30 days. Appellant did not submit any additional medical evidence.

By decision dated December 14, 2005, the Office denied appellant’s claim, finding that she failed to submit medical evidence sufficient to establish that she sustained left ankle arthritis in the performance of duty.

On January 19, 2006 appellant requested reconsideration. She submitted a February 14, 2006 report from Dr. Noel. He stated:

“[Appellant] was seen by me in the office on January 10, 2006 with complaints of pain in the left ankle.... Despite the preexisting injury [appellant] started working at [the employing establishment] in 1985 and for many years had no complaints about her ankles and knees. Beginning in 1991 she began to have pain in the left ankle and left leg and bilateral knee pain beginning in 2001. [T]his was associated at the time with a lot of standing, use of the rest bar, a lot of lifting and walking back and forth in the course of her duties as a postal employee.... [T]he prolonged walking, standing, lifting, pushing, pulling and carrying in the course of her duties as an employee of [the employing establishment] is what is responsible for her present debility. There are no other factors contributing to her present condition.”

By decision dated January 3, 2007, the Office denied modification of the December 14, 2005 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.² 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.³

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 employment factors identified by the claimant were the proximate cause of the condition 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 claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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.⁴

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed left ankle arthritis condition and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁵

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁶

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

⁵ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁶ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

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. Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

The Board finds that appellant has failed to submit sufficient medical evidence which relates her claimed left ankle arthritis condition to factors of her federal employment. For this reason, she has not discharged her burden of proof to establish her condition was sustained in the performance of duty.

Appellant submitted reports from Dr. Noel. However, the physician did not provide a rationalized medical opinion explaining how her left ankle arthritis was caused or aggravated by employment factors. In an August 18, 2005 report, Dr. Noel stated findings on examination of loss of plantar flexion, anterior and lateral tenderness and a bone spur in the left ankle. He diagnosed an arthritis condition in her left ankle, aggravated by her working posture. Dr. Noel noted a history of left ankle fracture in 1975, from which appellant recovered until 1991, when she began to experience chronic swelling in the left ankle after prolonged sitting at a rest bar with her weight on her legs. Walking and standing became difficult for appellant, especially after sitting and casing the mail for long hours at a time. Dr. Noel stated that appellant experienced repeated episodes of pain and swelling aggravated by sitting at the rest bar. He advised that appellant should take periodic sitting breaks for 10 minutes every 2 hours and recommended the use of an ergonomic chair with back and arm rests.

Dr. Noel's report did not adequately explain how sitting and casing mail would cause or aggravated her left ankle arthritis. His report is, therefore, of limited probative value as it did not contain sufficient medical rationale addressing how appellant's arthritis condition was affected by or related to her work duties.⁷ The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁸ The July 6, 2005 report of Dr. Noel is of diminished probative value as it is generalized and equivocal in nature. He noted that appellant's work activities could have contributed to or exacerbated her left ankle arthritic symptoms. The Office properly found that appellant did not sustain a left ankle arthritis condition in the performance of duty.

Following the December 14, 2005 decision, appellant requested reconsideration and submitted a February 14, 2006 report from Dr. Noel. He noted that despite her preexisting ankle condition, appellant had worked without complaint for the employing establishment from 1985 until 1991, when she began to experience pain in the left ankle. Dr. Noel attributed the onset of symptoms to a lot of standing and lifting, use of the rest bar and walking back and forth in the

⁷ *William C. Thomas*, 45 ECAB 591 (1994).

⁸ *See Anna C. Leanza*, 48 ECAB 115 (1996).

course of her work duties. He opined that the prolonged walking, standing, lifting, pushing, pulling and carrying in the course of her work duties were the factors which ultimately resulted in her left ankle arthritis condition. This report, however, is not sufficient to meet appellant's burden of establishing that her alleged left ankle arthritis condition was causally related to employment factors. Dr. Noel did not adequately describe the physiological process by which appellant's work would contribute to or aggravate her preexisting left ankle condition. He failed to submit a report which sufficiently described the medical process through which appellant's employment would have been competent to cause or aggravate her claimed left ankle arthritis condition. The Office, therefore, properly denied compensation for a left ankle arthritis condition in its January 3, 2007 decision.

The Office advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Consequently, appellant has not met her burden of proof in establishing that her claimed left ankle arthritis condition was causally related to her employment. The Board, therefore, affirms the Office's January 3, 2007 decision.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establish that her claimed left ankle condition was sustained in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 17, 2007
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