



an offer of modified employment on December 29, 2005. The record reflects that his left great toe was amputated on December 6, 2006.

In a December 7, 2005 duty status report, Dr. Robert Casanova, a podiatrist, noted that appellant was diabetic, had frostbite on his left great toe and that the frostbite was due to his job. Appellant submitted December 9, 2007 work tolerance limitations from Dr. Gerry Holland, a Board-certified family practitioner, and work excuses from Dr. Chris Jones, a podiatrist, and Dr. Casanova.

The employing establishment controverted the claim. On December 6, 2005 appellant assisted on the dock from 6:30 p.m. to 8:00 p.m. and had a sock on his foot. The employing establishment noted that he had worked with only a sock covering his foot for the previous two to three months. The employing establishment confirmed freezing temperatures on that date and that the dock was covered, but not heated. It was noted that appellant had a preexisting diabetic condition and that he also farmed animals he owned. A January 3, 2006 investigative report from the postal inspectors indicated that appellant was treated for a diabetic foot ulcer of his left foot since November 2, 2005.

On January 27, 2006 the Office informed appellant of the factual and medical evidence needed to support his claim and afforded him the opportunity to provide the necessary evidence.

In response, appellant described the work incident of December 6, 2005 and the weather conditions that day, and a copy of a December 28, 2005 modified-job offer. He also submitted a November 7, 2005 operative report and medical progress reports dated November 7 to December 2, 2005, and photographs of his left foot from Dr. Casanova concerning a left hallux wound and left plantar lesion. The November 7, 2005 operative report indicated that appellant underwent debridement of a diabetic foot ulcer, debridement of the great toe nail and total contact casting.

By decision dated March 3, 2006, the Office found the December 6, 2005 incident occurred. It denied the claim on the grounds that the medical evidence did not establish that appellant's left great toe condition was caused by the incident.

On April 2, 2006 appellant requested an oral hearing before an Office hearing representative which was held on January 23, 2007. In a January 8, 2007 statement, he disagreed with the employing establishment's version of the December 6, 2005 incident. Appellant submitted a copy of an April 1, 2006 Accident Review Board report, which determined that his accident was not preventable. At the hearing, he was advised to submit medical reports with narrative concerning the causal relationship of his condition. The record was held open for 30 days for the submission of such evidence.

On February 23, 2007 the Office received a note from appellant advising that he was enclosing a statement from Dr. Casanova. The record, however, was devoid of any report from Dr. Casanova.

By decision dated March 14, 2007, an Office hearing representative affirmed the denial of appellant's claim. She found that the incident established, but that the medical evidence was insufficient to establish causal relationship.

On appeal, appellant contends that he timely submitted medical evidence prior to the Office hearing representative's March 14, 2007 decision and she erred in other factual aspects of her decision.<sup>1</sup> He alleged that the hearing representative refused to accept evidence contained in the file, denied him representation during the hearing and did not allow him to call witnesses to refute the employing establishment's allegations.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</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>3</sup>

Office regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.<sup>4</sup> In order to determine whether an employee sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.<sup>5</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>6</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

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<sup>1</sup> With his appeal appellant submitted copies of evidence previously submitted along a February 20, 2007 express mail receipt, a February 22, 2007 delivery confirmation and a February 19, 2007 report from Dr. Casanova, which were not contained in the record transmitted to the Board. The Board is limited to review of evidence which was before the Office at the time of its final decision. The Board is, therefore, precluded from reviewing the new evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>4</sup> 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>5</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003).

<sup>6</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</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>8</sup>

### ANALYSIS

The evidence establishes that appellant experienced the December 6, 2005 work incident of exposure to cold temperatures while wearing a total contact cast for a preexisting left hallux wound and left plantar lesion. The Board finds, however, that he failed to meet his burden of proof to establish that he sustained an injury to his left great toe due to this incident.

The December 9, 2007 work tolerance limitations from Dr. Holland and the work excuses from Dr. Jones and Dr. Casanova do not provide any opinion regarding the cause of appellant's left foot condition. 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>9</sup> The reports from Dr. Casanova, dated November 7 to December 2, 2005, concern appellant's left foot condition prior to the December 6, 2005 employment incident and are, therefore, of diminished probative value to establish causal relationship. Dr. Casanova subsequently indicated that appellant's frostbitten left great toe was employment related in a December 7, 2005 duty status form report. However, he provided no further explanation for his opinion. It is well established that the checking of a box yes in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.<sup>10</sup> Dr. Casanova addressed appellant's preexisting diabetic condition and his left foot condition following the November 7, 2005 operation. He provided no explanation in his December 7, 2005 duty status report as to how the December 6, 2005 employment incident caused or aggravated appellant's preexisting left foot condition. His opinion on causal relationship is therefore insufficient to establish appellant's claim of injury. As noted, causal relationship must be established by rationalized medical opinion evidence. The Office advised appellant of the medical evidence required to establish his claim; however, he failed to submit such evidence. The Office properly denied appellant's claim for compensation based on a left great toe condition.

Although appellant generally alleged that the hearing representative erred in certain factual aspects of her decision, there is no evidence of record to substantiate his contentions. There is no evidence that appellant requested that witness statements be allowed in or that he had obtained representation prior to the hearing of January 23, 2007. There is also no evidence that the Office did not fully consider the factual or medical evidence submitted. The Office accepted that the December 6, 2005 work incident of exposure to cold temperatures occurred but denied

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<sup>7</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

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

<sup>9</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>10</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

the claim on the grounds that appellant failed to meet his burden of proof to establish that his left great toe injury was caused or aggravated by this incident. While appellant disagrees with the Office's development of the claim, it properly advised him of the medical evidence required to establish his claim.

**CONCLUSION**

Appellant has not met his burden of proof to establish that his frostbitten left great toe and subsequent amputation was causally related to the December 6, 2005 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 14, 2007 is affirmed.

Issued: January 9, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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