



In narrative statements dated September 9, 2004, appellant described the development of his hearing loss beginning on June 19, 1998 and pain in his elbows, fingers, upper back, knees, ankles and bones beginning on February 2, 1989, which he attributed to prolonged standing at work. He also provided a history of his medical treatment.

Appellant submitted several medical records including, a June 8, 2004 medical report of Dr. Roobila Naz, a Board-certified internist, which stated that his bilateral heel spurs and degenerative joint disease in the elbows, fingers, upper back, knees and ankles were work related. An August 18, 2003 report of Dr. Gary M. Moscarello, a Board-certified orthopedic surgeon, stated that the pain appellant experienced in his neck, shoulders and back may have been related to his work duties at the employing establishment as he had no prior history of pain except for back pain while serving in the military. In a November 22, 2004 report, Edgar San Luis, a nurse practitioner, stated that appellant's noninsulin-dependent diabetes mellitus (NIDDM), hyperlipidemia, bilateral heel spurs, degenerative joint disease and hearing loss were caused by his duties as a sack sorter machine operator.

By decision dated August 16, 2005, the Office denied appellant's claim. It found that he failed to submit any evidence establishing his work duties. The Office further found that appellant failed to submit rationalized medical evidence establishing that he sustained a medical condition causally related to his federal employment.

On June 21, 2006 appellant requested reconsideration. In a November 3, 2004 statement, he related that he had never sustained similar ankle, heel or degenerative joint disease of both feet prior to working at the employing establishment. Appellant provided a description of his work duties as a mail handler for 19 years and a sack sorter machine operator for 12 years. He operated a keyboard control unit on a sorting machine which required standing and he performed repetitious tasks such as, gripping, dragging, flipping, turning, pushing and lifting all day with the exception of two 15-minute breaks and 45 minutes for lunch. Appellant submitted numerous medical records, which addressed his medical conditions including, Mr. San Luis' June 8, 2004 and July 26, 2005 reports, which reiterated his prior opinion that appellant's NIDDM, bilateral heel spurs, hearing loss and degenerative joint disease were caused by his sack sorter machine operator duties. In an August 12, 2004 report, Dr. Naz opined that appellant's bilateral heel spurs and degenerative joint disease were causally related to his sack sorter machine operator duties.

In an undated narrative statement, appellant reiterated that his feet, neck, back, hearing loss, elbow, hand and knee conditions were caused by his work duties. He noted his physical activities and hobbies, which included bowling in a league six to eight weeks in 1985, 1987 and 1988, collecting coins, caps and key chains, playing the harmonica, listening to the radio, watching television, pruning his roses, traveling and attending Bible study.

In a May 26, 2006 report, Mr. San Luis described appellant's work duties as a mail handler and sack sorter machine operator. He stated that appellant sorted and bundled mail and a lifted sacks of mail continuously while standing except during two 15-minute breaks and 45-minute lunch. Mr. San Luis reviewed a history of the development of appellant's foot, knee, shoulder, finger, leg and back problems beginning on February 2, 1989 and medical treatment.

By decision dated August 11, 2006, the Office denied modification of the August 16, 2005 decision. It found the evidence of record sufficient to establish that appellant worked on his feet during the entire workday as a mail handler at the employing establishment for 22 years, but insufficient to establish that he sustained a medical condition causally related to the accepted employment factor.

By letter dated March 12, 2007, appellant, through his attorney, requested reconsideration. He submitted a January 18, 2007 report of Michael Jabion, a radiology technologist, regarding an ultrasound of appellant's feet, which was performed on behalf of Dr. T. Eric Yahoo, an orthopedic surgeon. Mr. Jabion stated that appellant sustained bilateral plantar fasciitis and mild posterior tibialis tenosynovitis, joint effusion of the first through fourth metacarpophalangeal (MCP) joints and right Achilles tendinitis. Also on January 18, 2007 Dr. Yahoo reviewed Mr. Jabion's report and agreed with his findings. In a January 2, 2007 report, Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, reviewed appellant's medical history. In reports dated January 30, 2007, he provided his findings of tenderness and pain in the heels, neck, back, a positive Tinel's sign and tenderness of both elbows and decreased sensation in both feet on physical and neurological examination. Dr. Tauber diagnosed bilateral flexor and extensor tenosynovitis with radiocarpal joint effusions in the wrists and hands, bilateral plantar fasciitis and posterior tibialis tenosynovitis, joint effusions and right Achilles tendinitis based on ultrasound studies. He also diagnosed medial and lateral epicondylitis and radiohumeral bursitis of the right elbow. Dr. Tauber noted that appellant previously received schedule awards for loss of motion of the right shoulder. He recommended an additional nine percent impairment for each shoulder due to his axillary nerve weakness. Dr. Tauber opined that the diagnosed conditions were work related in light of appellant's strenuous duties, repetitive motion and long periods of standing for 22 years while working at the employing establishment. In a February 27, 2007 report, he stated that magnetic resonance imaging scans of appellant's knees revealed bursitis of the pes anserinus of the left knee and tendinitis of the quadriceps of the right knee. Dr. Tauber opined that these findings were consistent with chronic tendinitis from the use of his lower extremities which was clearly industrial in part given the nature of his activity. He stated that appellant's knee conditions should be added to his claim.

In a November 28, 2006 statement, appellant stated that he had been on light-duty status for about five years, three years in the sack sorter unit and two years in a new unit processing letters at a table.

In a decision dated September 25, 2007, the Office denied appellant's request for reconsideration after reviewing the merits.<sup>1</sup> It found that the evidence submitted was repetitious and cumulative in nature and, thus, insufficient to warrant further merit review of its prior decisions. The Office found that Mr. Jabion's January 18, 2007 ultrasound report was merely a diagnostic finding. It further found that Dr. Tauber failed to provide medical rationale explaining how appellant's medical conditions were causally related to his employment. The Office stated that, based on Dr. Tauber's reports, it was unclear how appellant's whole body was affected by his employment duties. It then explained that the identification of an underlying

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<sup>1</sup> The Board notes that, although the Office found that a "merit review of the claim is not warranted," it finds that the Office actually conducted a merit review as it determined the probative value or lack thereof of the evidence appellant submitted with his request for reconsideration.

condition or its normal progression due to a claimed work accident did not establish entitlement to compensation under the Federal Employees' Compensation Act. The Office further explained that a mere assertion that an employee was asymptomatic prior to a claimed work incident and the fact or belief that an injury arose during a period of employment was insufficient to establish causal relation under the Act. In denying appellant's request for reconsideration, the Office based its decision on the probative value and evidentiary weighing of Dr. Tauber's medical reports and, thereby, reviewed the merits of appellant's claim.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act<sup>2</sup> has the burden of establishing the essential elements of his 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.<sup>3</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</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 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 a causal relationship is rationalized medical opinion 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.<sup>5</sup> Neither the fact that appellant's condition became apparent during a period of employment nor his belief that the condition was caused by his employment is sufficient to establish a causal relationship.<sup>6</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>6</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

## ANALYSIS

The Office accepted that the evidence establishes that appellant was required to stand the entire day while performing his duties as a mail handler and sack sorter machine operator. However, the Board finds that the medical evidence of record fails to establish that he developed a diagnosed medical condition that was causally related to the accepted employment factor.

Appellant submitted Dr. Naz' June 8 and August 12, 2004 reports, which stated that appellant's bilateral heel spurs and degenerative joint disease in the elbows, fingers, upper back, knees and ankles were casually related to his employment. However, Dr. Naz did not provide any medical rationale explaining how or why the diagnosed conditions were caused by appellant's work duties. The Board has held that a medical opinion not supported by medical rationale is of little probative value.<sup>7</sup> Therefore, the Board finds that Dr. Naz' report is insufficient to establish appellant's claim.

Similarly, Dr. Tauber's January 30 and February 27, 2007 reports are insufficient to establish appellant's claim. He provided his findings on physical, neurological and objective examination. Dr. Tauber stated that appellant sustained bilateral flexor and extensor tenosynovitis with radiocarpal joint effusions in his wrists and hands, bilateral plantar fasciitis and posterior tibialis tenosynovitis, joint effusions, right Achilles tendinitis, medial and lateral epicondylitis and radiohumeral bursitis of the right elbow and bursitis of the pes anserinus of the left knee and tendinitis of the quadriceps of the right knee which were consistent with chronic tendinitis from the use of his lower extremities. He opined that these diagnosed conditions were related to his employment which required strenuous duties, repetitive motion and long periods of standing for 22 years. Dr. Tauber failed to provide medical rationale explaining the causal relationship between appellant's diagnosed conditions and his accepted employment factor.<sup>8</sup> The Board finds that Dr. Tauber's reports are insufficient to establish appellant's burden of proof.

Dr. Tauber's January 2, 2007 report merely reviewed appellant's medical history. He did not opine that appellant sustained a medical condition causally related to a factor of his employment. The Board finds that Dr. Tauber's report is insufficient to establish appellant's burden of proof.

Dr. Yahoo's January 18, 2007 report stated that appellant sustained bilateral plantar fasciitis and mild posterior tibialis tenosynovitis, joint effusion of the first through fourth MCP joints and right Achilles tendinitis. He did not opine that the diagnosed conditions were caused by the accepted factor of appellant's employment. The Board finds that Dr. Yahoo's report is insufficient to establish appellant's claim.

Dr. Moscarello's August 18, 2003 report stated that the pain appellant experienced in his neck, shoulders and back "may" have been related to his work duties at the employing establishment as he had no prior history of pain except for back pain while serving in the military. A physician's mere diagnosis of pain, without more by way of an explanation, does not

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<sup>7</sup> *Caroline Thomas*, 51 ECAB 451 (2000).

<sup>8</sup> *Id.*

constitute a basis for payment of compensation.<sup>9</sup> Further, the Board has held that medical opinions which are speculative or equivocal in character have little probative value.<sup>10</sup> Moreover, the Board has found that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic afterwards, is insufficient, without supporting rationale, to establish causal relationship.<sup>11</sup> Dr. Moscarello's opinion is speculative regarding causal relation and it was not supported by medical rationale explaining how or why appellant's pain was caused by the accepted employment factor.<sup>12</sup> The Board finds that his report is insufficient to establish appellant's claim.

The June 8 and November 22, 2004 and July 26, 2005 reports of Mr. San Luis, a nurse practitioner, regarding the causal relationship between appellant's employment and his diagnosed conditions are of no probative value as a nurse practitioner is not a physician pursuant to the Act.<sup>13</sup>

The Board finds that appellant has not submitted rationalized medical evidence establishing that his claimed conditions were causally related to his accepted employment factor. He did not meet his burden of proof.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained an injury while in the performance of duty.

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<sup>9</sup> *Robert Broome*, 55 ECAB 0493 (2004).

<sup>10</sup> *L.R. (E.R.)*, 58 ECAB \_\_\_\_ (Docket No. 06-1942, issued February 20, 2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>11</sup> *John F. Glynn*, 53 ECAB 562 (2002).

<sup>12</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>13</sup> *See* 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208 (2004); *Thomas R. Horsfall*, 48 ECAB 180 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 25, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 10, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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