

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

D.R., Appellant)	
)	
and)	Docket No. 09-1160
)	Issued: December 4, 2009
U.S. POSTAL SERVICE, POST OFFICE,)	
Atlanta, GA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 30, 2009 appellant filed a timely appeal from a November 25, 2008 merit decision of the Office of Workers' Compensation Programs denying her claim. Pursuant to 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 sustained an injury in the performance of duty causally related to her federal employment.

FACTUAL HISTORY

On October 1, 2008 appellant, a 47-year-old letter carrier, filed an occupational disease claim (Form CA-2) for plantar fasciitis and bone spurs that she attributed to delivering mail for 28 years. She also submitted a supplemental statement detailing her employment duties and recent medical treatment.

Appellant submitted reports dated August 1 and 3, 2007, as well as September 16, 2008, signed by Dr. Herman H. Lee, an orthopedist, diagnosing diabetes, chronic kidney disease, foot pain, bilateral plantar and small posterior heel spurs and various hypertrophic changes to the

dorsal areas of appellant's feet. In his August 1, 2007 report, Dr. Lee confirmed that x-rays taken of appellant's feet confirmed bilateral plantar and small posterior heel spurs, as well as hypertrophic changes of the dorsal aspects of the intertarsal joints bilaterally.

By decision dated November 25, 2008, the Office denied appellant's claim because the evidence of record did not demonstrate that the diagnosed conditions were caused by the identified employment factors.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of the claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation, that an injury was sustained while 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 essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

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

ANALYSIS

Appellant identified delivering mail as the employment factor that caused her medical conditions. Her burden is to establish her diagnosed medical conditions were caused by the identified employment factor. Causal relationship is a medical issue that can only be proven by competent, probative medical opinion evidence. The Board finds the evidence of record insufficient to satisfy appellant's burden.

The relevant medical evidence of record consists of reports signed by Dr. Herman H. Lee who did diagnose appellant's bilateral foot conditions as bilateral plantar and small posterior heel spurs, with hypertrophic changes to the dorsal areas of the feet. This evidence is of little probative value on the issue of causal relationship as Dr. Lee provided no opinion regarding the cause of the diagnosed conditions nor any medical rationale explaining how the identified

¹ 5 U.S.C. §§ 8101-8193.

² C.S., 60 ECAB ____ (Docket No. 08-1585, issued March 3, 2009).

³ S.P., 59 ECAB ____ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

employment factors caused the conditions he diagnosed.⁵ As such, Dr. Lee's reports are insufficient to satisfy appellant's burden of proof.⁶

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁷ Appellant has not submitted probative medical evidence establishing a causal relationship between a medically diagnosed condition and identified employment factors.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty causally related to her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the November 25, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁵ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). See also *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁶ Appellant submitted an unsigned document dated August 15, 2007. The statement did not contain a letterhead or other information which would identify the author as a "physician" for purposes of the Act. See *Merton J. Sills*, 39 ECAB 572, 575 (1988). Thus, this report is insufficient to establish appellant's claim.

⁷ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).