

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

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**G.M., Appellant**

**and**

**U.S. POSTAL SERVICE, FOREST HILL  
STATION, Richmond, VA, Employer**

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**Docket No. 09-113  
Issued: July 1, 2009**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 16, 2008 appellant filed a timely appeal from an August 27, 2008 decision of the Office of Workers' Compensation Programs that denied his 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 met his burden of proof to establish that he has a bilateral foot condition causally related to factors of his federal employment.

**FACTUAL HISTORY**

On August 29, 2005 appellant, then a 46-year-old clerk/carrier, filed a Form CA-2, occupational disease claim, alleging that after working in a light-duty clerk position because of a foot condition for a number of years on August 16, 2005 he was returned to a carrier position causing aggravation of bilateral pes planus. He had stopped work on August 1, 2005 and returned to clerk duties on September 17, 2005. The employing establishment controverted the

claim, noting that appellant had not worked as a carrier since a 1991 injury and submitted a copy of his position description.

In support of his claim, appellant submitted a January 2, 2004 treatment note from Dr. William D. Brickhouse, a Board-certified orthopedic surgeon, which noted that appellant had a history of bilateral plantar fascia fibromatosis and blister formation that occurred when he worked as a letter carrier, and had continued complaints of pain and intermittent rashes. Physical examination demonstrated a mild degree of pes planus (flat feet) bilaterally with some tenderness in the mid part of his feet. Dr. Brickhouse diagnosed chronic history of blistering on the plantar surfaces of both feet, stating “I [a]m not sure what this blistering and rash formation is about,” and referred appellant to Dr. William Van Manen, Board-certified in orthopedic surgery. In a July 29, 2004 report, Dr. Van Manen noted that appellant had blistering, painful, draining lesions on the bottom aspect of his right foot that looked like athlete’s foot. On August 29, 2005 he noted that appellant had continued foot problems and that the blistering had resolved for the most part. Dr. Van Manen advised that appellant could return to light duty and should be off his feet for 20 minutes each hour with a 25-pound lifting restriction. On November 3, 2005 he advised that he had referred appellant for a functional capacity evaluation and that he would see appellant on an as-needed basis.

By decision dated March 28, 2006, the Office denied the claim on the grounds that the medical evidence did not establish that his foot condition was causally related to employment factors. In a form request dated April 9, 2006, stamped received by the Office on January 28, 2008, appellant requested reconsideration and submitted a May 15, 2006 report in which Dr. Brickhouse noted appellant’s continued complaints of bilateral foot pain, made worse by attempting to stand and walk. Physical examination demonstrated full range of motion of the ankles with no effusions or swelling and complaints of tenderness on palpation of the short extensions of the toes. Dr. Brickhouse noted that appellant had mild pes planus and his feet were flexible otherwise with no lesions or masses palpable. He diagnosed bilateral foot pain of unclear etiology, and restricted appellant’s activities in terms of standing and walking.

In a January 30, 2008 decision, the Office found that, while appellant’s reconsideration request was dated April 9, 2006, it was not received until January 28, 2008. It denied the reconsideration request because it was untimely and appellant did not establish clear evidence of error. On March 5, 2008 appellant filed an appeal with the Board and requested oral argument. In an order dated August 14, 2008, the Board remanded the case and cancelled the scheduled oral argument, finding that, as a copy of the mailing envelope was not in the case record, appellant’s reconsideration request dated April 9, 2006 was deemed timely filed.<sup>1</sup> The law and the facts of the previous Board order are incorporated herein by reference.

In a merit decision dated August 27, 2008, the Office denied modification of the prior decision. It reviewed Dr. Brickhouse’s May 15, 2006 report and found that it was insufficient to establish causal relationship.

On February 19, 2009, the Board issued a final decision in this case. The Board found that appellant did not establish that he sustained a bilateral foot condition causally related to

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<sup>1</sup> Docket No. 08-1170 (issued August 14, 2008).

employment factors and affirmed the August 27, 2008 Office decision. By letter dated March 30, 2009, appellant requested the status of his appeal and of his request for oral argument before the Board. The Clerk of the Board thereafter determined that the February 19, 2009 decision was sent to an improper address. By order dated May 13, 2009, sent to appellant's correct address, the Board vacated the February 19, 2009 decision. In a May 13, 2009 letter, also sent to his correct address, appellant's request for an oral argument was acknowledged.<sup>2</sup> He was instructed to inform the Board in writing by May 28, 2009 if he wished to proceed with oral argument. Appellant did not submit a response.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</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>4</sup>

Office's regulations define the term "occupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift."<sup>5</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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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>6</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>7</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there

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<sup>2</sup> The February 19, 2009 decision was sent to appellant at 5504 Lower Wyndham Court, Glen Allen, Virginia 23509. The May 13, 2009 order and correspondence were sent to his address of record, 12636 Meghans Bay Court, Richmond, Virginia 23233.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>5</sup> 20 C.F.R. § 10.5(ee).

<sup>6</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>7</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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>8</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>9</sup>

### ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he has a diagnosed foot condition causally related to factors of his federal employment because he failed to submit rationalized medical evidence to support his claim. While appellant submitted reports from Dr. Brickhouse and Dr. Van Manen, neither physician provided a clear opinion regarding the cause of appellant's diagnosed foot condition. Dr. Brickhouse advised that he did not know the cause and merely noted appellant's continued complaints of foot pain when he attempted to stand or walk. The fact that work activities produced pain or discomfort revelatory of an underlying condition does not raise an inference of causal relationship,<sup>10</sup> and a diagnosis of "pain" does not constitute the basis for payment of compensation.<sup>11</sup> Likewise, the fear of future injury is not compensable under the Act.<sup>12</sup> Dr. Van Manen provided no opinion regarding appellant's diagnosed foot condition, and 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>13</sup> While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>14</sup>

The Board finds that, as neither Dr. Brickhouse nor Dr. Van Manen clearly attributed any diagnosed foot condition to employment factors, appellant failed to establish that his foot condition in 2005 was caused by his federal employment.

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

<sup>9</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>10</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>11</sup> *Robert Broome*, 55 ECAB 339 (2004).

<sup>12</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>13</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>14</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001).

**CONCLUSION**

The Board finds that appellant did not establish that he sustained a bilateral foot condition causally related to factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 27, 2008 be affirmed.

Issued: July 1, 2009  
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