

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

B.B., Appellant

and

**SOCIAL SECURITY ADMINISTRATION,
Dallas, TX, Employer**

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**Docket No. 08-1990
Issued: March 17, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 15, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated May 15, 2008. 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 has met her burden of proof in establishing that she developed a bilateral hand, wrist, shoulder, knee or foot condition due to factors of her federal employment.

FACTUAL HISTORY

On October 13, 2005 appellant, then a 46-year-old lead case technician, filed an occupational disease claim alleging that on October 7, 2002 she developed excruciating pain, numbness and tingling in both hands, wrists and shoulders as well as catching in her knees. She attributed her condition to delivering cases weighing 20 to 40 pounds, numbering pages and constant computer use.

In support of her claim, appellant submitted a note dated November 8, 2005 from Dr. Dalton Rhea, a family practitioner, who reported appellant's pain in the right side of her neck, shoulders, arms, wrists, hands, left knee and both feet. Dr. Rhea noted that appellant attributed her conditions to her job duties of lifting boxes, computer usage and standing and walking in the performance of duty. He found that appellant's feet were within normal limits and diagnosed right shoulder and arm pain, wrist and hand pain, right sciatica and left knee pain.

By decision dated March 1, 2006, the Office denied appellant's claim finding that she failed to submit the necessary medical opinion evidence with a description of the causal relationship between her physical conditions and her accepted employment duties.

Appellant requested reconsideration on February 27, 2007 and submitted a report dated February 27, 2007 from Dr. Johnny L Gates, an internist, who noted that appellant reported low back pain and right knee pain and that she attributed this pain to her October 7, 2002 employment injury. Dr. Gates listed appellant's job duties and diagnosed disc herniation, bilateral knee pain and right shoulder pain. By decision dated April 27, 2007, the Office reviewed appellant's claim on the merits and denied modification of its March 1, 2006 decision finding that appellant had not submitted the necessary medical evidence containing an opinion that appellant's diagnosed conditions were caused or aggravated by her employment duties.

On April 1, 2008 appellant again requested reconsideration and submitted a report dated February 12, 2008 from Dr. R. Young, a podiatrist, who listed appellant's job duty of pushing carts weighing 30 to 40 pounds for long distances. Dr. Young found extreme tenderness with pressure under the second and third metatarsal heads of both feet. He found excessive hyperkeratotic tissue that the second metatarsal heads were prominent. Dr. Young diagnosed elongated depressed second metatarsal head with associate capsulitis in both feet, severely painful hyperkeratotic lesions secondary to plantar flexion of the second metatarsals and chronic repetitive stress syndrome creating painful callused areas under the second metatarsal heads bilaterally. He stated, "I explained that the activity that she was involved in during the year 2002 has probably significantly contributed to and created this chronic pain and callusing that she has been experiencing."

By decision dated May 15, 2008, the Office denied modification of the prior decisions, finding that Dr. Young's report was not sufficiently rationalized to meet appellant's burden of proof.

LEGAL PRECEDENT

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.¹ 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 a disease or condition for which compensation is claimed; (2) a factual statement identifying the 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

¹ 20 C.F.R. § 10.5(q).

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.² The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.³

ANALYSIS

Appellant has alleged that she developed conditions of her hands, wrists, shoulders, knees and feet due to her employment duties of delivering cases, numbering pages and computer use. She has submitted reports from three physicians in support of her claim. Dr. Rhea, a family practitioner, diagnosed pain in the right shoulder and arm as well as wrist and hand pain and left knee pain. The Board has held that the mere diagnosis of "pain" does not constitute a basis for the payment of compensation.⁴ As Dr. Rhea did not provide any further diagnoses of these conditions, his report is not sufficiently detailed to meet appellant's burden of proof regarding injury to these body parts. He further found that appellant's feet were within normal limits on physical examination. This finding does not support an injury to appellant's feet due to her employment duties. Finally, Dr. Rhea diagnosed right sciatica. While this is an appropriate diagnosis of a medical condition, he did not provide any opinion that appellant's employment duties caused or aggravated her right sciatica. This report is not sufficient to meet appellant's burden of proof in establishing an occupational disease.

Appellant also submitted a report dated February 27, 2007 from Dr. Gates, an internist, diagnosing knee pain and right shoulder pain. Again these findings are not sufficiently detailed to constitute the diagnosis of a medical condition and this report cannot establish an occupational disease in regard to appellant's knee or shoulder. Dr. Gates also diagnosed disc herniation, a medical condition, but failed to provide any opinion on the relationship between this condition and appellant's implicated employment duties. Due to the lack of evidence regarding a causal relationship between appellant's duties and her disc herniation, this report is not sufficient to meet appellant's burden of proof.

Dr. Young, a podiatrist, completed a report on February 12, 2008 and diagnosed various conditions of appellant's feet including depressed second metatarsal heads with capsulitis, a hyperkeratotic lesion below the metatarsal heads and chronic repetitive stress syndrome resulting in callused areas under the second metatarsal heads. He noted appellant's employment duties and opined that appellant's employment duties in 2002 "significantly contributed" to her chronic pain and callusing. While Dr. Young does offer an opinion on the causal relationship between appellant's employment duties and the conditions of her feet, he did not provide any medical rationale explaining how and why he believed that appellant's duties in 2002 resulted in these conditions. This medical reasoning is especially necessary given that Dr. Rhea found that

² *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

³ *James Mack*, 43 ECAB 321, 328-29 (1991).

⁴ *Robert Broome*, 55 ECAB 339, 342 (2004).

appellant's feet were within normal limits in 2005 and that Dr. Young did not examine appellant until 2008 several years after her initial claim. As appellant has not provided a detailed medical report with a clear opinion on the causal relationship between her diagnosed medical conditions and her employment duties supported by medical reasoning, she has failed to meet her burden of proof and the Office properly denied her claim.

CONCLUSION

The Board finds that appellant has not submitted the necessary medical evidence to meet her burden of proof and that the Office therefore properly denied her claim for an occupational disease.

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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