

elevator outage in May 2007 aggravated a preexisting ankle and foot condition.¹ She experienced pain in her feet and legs since returning to her light-duty assignment and that, eventually, her ankles began to swell and she was unable to work. Appellant indicated that her condition was “not a recurrence but it is an aggravation of ongoing injuries.”

In a statement dated September 15, 2007, appellant noted that she had worked at the employing establishment for 20 years. She had sustained several previous on-the-job injuries, including injuries to her wrists, back, hip, shoulders, feet and legs. Appellant described the history of her work-related injuries, stating that she underwent surgery in 2000 and 2001 for a 1996 injury to her feet and ankles. She continued to experience back pain after she returned to light duty in 2004. In 2005, the Office accepted a claim for cervical strain and lumbosacral radiculopathy (File No. xxxxxx877). In January 2006, appellant was hospitalized for foot pain. She stated that in May 2006, she developed right wrist pain due to her filing and copying duties. In April or May 2007, appellant was required to climb stairs several times per day, due to the fact that the elevator at her work site was inoperative. She alleged that, each time she climbed the stairs, she had to stop and rest due to pain, and that her hip, back, foot and leg conditions worsened as a result of this repeated activity.

In a statement dated March 13, 2006, appellant alleged that she developed a cervical condition due to repetitive duties of pulling tape from a dispenser while bending her neck constantly over a low table. She stated that in June or July 2005 she developed a painful knot between her left shoulder and arm muscles, which she opined was due to cumulative trauma of the cervical spine.

In a June 24, 2007 report, Dr. Robert D. Teasdale, a Board-certified orthopedic surgeon, related her complaints of increased lower back and wrist pain. He noted that appellant had experienced an attack of gout in the right foot, and that she was in severe pain after walking for 30 minutes. Dr. Teasdale stated that he was unable to detect clear neurological deficits.

In a June 27, 2007 report, Dr. Jon-Paul Seslar, a podiatrist, stated that he had been treating appellant for foot and ankle problems for seven years. He diagnosed bilateral posterior tibial tendon dysfunction, which resulted in collapsed feet, arthritic medial longitudinal arches and ankles varus. Dr. Seslar diagnosed bilateral tarsal tunnel syndrome and neuropathy, degenerative disc disease and spinal stenosis. He stated, “I believe the collective amount of work-related injuries that this patient has sustained does mandate that she discontinue her employment.”

On July 3, 2007 Dr. Richard M. Sankara, a treating physician, requested that appellant be excused from work from June 20, 2007 through January 1, 2008 “for medical reasons.”

¹ The record reflects that appellant has filed several claims, including: a March 5, 1996 occupational disease claim (File No. xxxxxx584), which was accepted for bilateral foot and ankle tendinitis, left Achilles tendinitis, right nonunion fracture and nausea; File No. xxxxxx318 claiming right carpal tunnel syndrome and a right shoulder condition; and File No. xxxxxx300 claiming a back condition.

On July 17, 2007 Dr. Sankara indicated that appellant was unable to work as of June 20, 2007 due to sciatic nerve pain, knee pain, rotator cuff pain and carpal tunnel syndrome. He opined that she would greatly benefit from long-term disability.

In a letter dated September 27, 2007, the Office informed appellant that the evidence submitted was insufficient to establish her claim. It advised her to submit details regarding the employment duties she believed caused or contributed to her claimed condition, as well as a comprehensive medical report from a treating physician, which contained symptoms, a diagnosis, and an opinion with an explanation as to the cause of her diagnosed condition. Specifically, the Office asked for an explanation as to why her current claimed condition resulted from a new work injury, rather than from a prior accepted injury.

In a statement received on October 25, 2007, appellant provided a chronology of work activities which allegedly caused a worsening of her prior accepted conditions. From February 12 to August 17, 2004, her duties included a substantial amount of walking. After August 17, 2004, appellant counted equipment, which required her to walk on cold cement. She also performed repetitive activities with her hands. Appellant alleged that her position of handing out badges in 2005, which required her to stand in cold air, aggravated her shoulder and cervical spine conditions, and that repetitive office tasks in 2006 aggravated her carpal tunnel syndrome. Finally, she asserted that she experienced increased pain in her legs, feet, back and knees when the employing establishment elevator was out of service in May 2007. Appellant stated that she had undergone four surgeries for work-related injuries, namely, right and left rotator cuff surgeries (1994 and 1996) and bilateral foot, ankle and leg surgeries (2001 and 2002).

The record contains an emergency room report dated January 22, 2006 reflecting a diagnosis of neuropathic left foot pain. The record also contains a report of a January 22, 2006 x-ray of the left foot.

By decision dated December, 2007, the Office denied appellant's claim on the grounds that she had not established a causal relationship between the claimed medical condition and accepted work-related events. Noting that appellant had filed numerous claims previously, which had been accepted for various conditions, the Office found that the evidence did not establish that appellant had sustained a new work injury.

On January 12, 2008 appellant requested an oral hearing. Her request was later modified to a request for review of the written record.

In a letter dated June 6, 2008, appellant's representative contended that appellant had aggravated previously accepted conditions by walking up and down stairs several times each day, due to a nonfunctioning elevator. He indicated that he was enclosing a copy of a March 30, 2007 report from Dr. Seslar, which allegedly restricted appellant's climbing activities.²

In a narrative report dated May 24, 2008, Dr. Seslar advised that appellant had permanent restrictions which prohibited climbing. He noted that appellant had been required to use the

² The record does not contain a copy of the March 20, 2007 letter from Dr. Seslar.

stairs at the employing establishment several times per day while the elevator was not functioning from May 11 to July 25, 2007, and that she had experienced an increase in the amount of symptoms in her feet and legs. Dr. Seslar stated, "I think it [i]s relevant to her case that the increased physical demands of climbing stairs coincided with her increased symptoms."

By decision dated August 18, 2008, the Office hearing representative affirmed the December 14, 2007 decision. The representative found that the evidence did not establish that appellant had sustained a new injury or a worsening of her medical condition.

On September 10, 2008 appellant, through her representative, requested reconsideration. The representative contended that the evidence established that appellant was restricted from climbing and that she was required to climb stairs in the May to July 2007 time frame, due to a nonfunctioning elevator. He reiterated appellant's argument that she had not sustained a new injury, but that stair climbing had aggravated her ongoing orthopedic conditions.

In a December 15, 2008 decision, the Office denied modification of its previous decisions. It accepted that the employing establishment elevator was nonoperational and required repair in May 2007. However, the claim was denied on the grounds that the medical evidence failed to establish a causal relationship between a diagnosed condition and the established employment factor.

LEGAL PRECEDENT

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 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 employment factors identified by the claimant.³ The evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to the claimant's diagnosed condition. To be of probative value, 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.⁴

An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.⁵

³ *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

⁴ *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

⁵ *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, 43 ECAB 215 (1997).

ANALYSIS

The Office accepted that appellant climbed stairs at the employing establishment from May through July 2007. However, the Board finds that the medical evidence of record is insufficient to establish that her diagnosed medical condition was caused or aggravated by the established events.

On June 24, 2007 Dr. Teasdale noted appellant's complaints of increased lower back and wrist pain. He advised that she had experienced an attack of gout in the right foot, and that she was in severe pain after walking for 30 minutes; however, he was unable to detect clear neurological deficits. Dr. Teasdale did not provide any detailed findings on examination or express an opinion as to the cause of appellant's current condition. Therefore, his report is of limited probative value and is insufficient to establish appellant's claim.⁶

On July 3, 2007 Dr. Sankara requested that appellant be excused from work from June 20, 2007 through January 1, 2008 "for medical reasons." On July 17, 2007 he found that appellant was unable to work as of June 20, 2007 due to sciatic nerve pain, knee pain, rotator cuff pain and carpal tunnel syndrome and opined that she would greatly benefit from long-term disability. Dr. Sankara's brief reports lack probative value, as they provided no examination findings or any opinion on the cause of appellant's diagnosed conditions.

Dr. Seslar's reports are also insufficient to establish appellant's claim. On June 27, 2007 he stated that he had been treating appellant for foot and ankle problems for seven years, noting that she suffered from bilateral posterior tibial tendon dysfunction, which resulted in collapsed feet, arthritic medial longitudinal arches and ankles varus. Dr. Seslar diagnosed bilateral tarsal tunnel syndrome and neuropathy, degenerative disc disease and spinal stenosis. He stated, "I believe the collective amount of work-related injuries that this patient has sustained does mandate that she discontinue her employment." This report is deficient on several counts. Dr. Seslar did not provide findings on examination or describe appellant's job duties as accepted, using stairs from May through July 2007. He did not explain the medical process through which such duties would have been competent to cause or aggravate her claimed conditions. Most importantly, Dr. Seslar did not describe a new injury resulting from the activity of climbing stairs from May through July 2007, as alleged by appellant.

On May 24, 2008 Dr. Seslar indicated that appellant had permanent restrictions which prohibited climbing. He noted that she had been required to use the stairs at the employing establishment several times per day while the elevator was not functioning from May 11 to July 25, 2007, and that she experienced an increase in symptoms to her feet and legs. Dr. Seslar stated, "I think it [i]s relevant to her case that the increased physical demands of climbing stairs coincided with her increased symptoms." However, he did not provide a definitive opinion as to the cause of any claimed aggravation. Dr. Seslar's statement is speculative and vague. He did not sufficiently explain the medical process through which climbing stairs would have been competent to cause the claimed condition. Medical conclusions unsupported by rationale are of

⁶ Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *See A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006); *Michael E. Smith*, 50 ECAB 313 (1999).

little probative value.⁷ The Board also notes that Dr. Seslar did not address the elevator outage or the accompanying requirement that appellant climb stairs at the employing establishment until one year after the outage. His earlier report focused on “the collective amount of work-related injuries” sustained by appellant. The subsequent report of 2008 does not reconcile his prior opinion or cure the deficiencies noted in addressing causal relation.

The remaining medical evidence of record includes a January 22, 2006 emergency room report and a report of a January 22, 2006 x-ray of the left foot. As these reports do not contain any opinion on the cause of appellant’s condition, they are of limited probative value and insufficient to establish appellant’s claim.

Appellant expressed her belief that she aggravated previously accepted lower extremity conditions by climbing stairs at the employing establishment. However, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁸ Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.⁹ Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant’s responsibility to submit.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the doctor’s opinion, with medical reasons, on the cause of her condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how appellant’s claimed conditions were caused or aggravated by new employment events or conditions, she has not met her burden of proof in establishing that she sustained an occupational disease in the performance of duty causally related to factors of employment.

On appeal appellant’s representative contends that the evidence submitted in support of her request for reconsideration was sufficient to warrant modification of the August 18, 2008 decision. The representative pointed out that appellant had identified the problem with the nonfunctioning elevator and its relationship to her current condition as early as October 25, 2007. He also noted appellant’s contention that her condition was a continuation of a previous injury. As noted, the Board finds the medical opinion evidence of record insufficient to establish that appellant sustained an aggravation of her accepted conditions as a result of the established activity of climbing stairs from May through July 2007.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

⁷ *Willa M. Frazier*, 55 ECAB 379 (2004).

⁸ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the December 15 and August 18, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 22, 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