

In medical reports dated December 8, 2008, Dr. Jay J. Betz, an attending occupational medicine specialist, reviewed a history of a cage falling on appellant's foot in the performance of duty, resulting in pain which grew worse over time. He diagnosed metatarsalgia and contusion of the left foot. In another December 8, 2008 report, Dr. Betz reviewed a history that several years ago appellant's left foot was smashed under a gate at work. Appellant did not seek medical treatment at that time but, continued to experience pain. Her pain grew worse and was aggravated during the past several months by walking on concrete. Dr. Betz listed his findings on physical examination and reiterated his prior diagnosis of metatarsalgia. He stated that appellant was status post bunionectomy of the left foot. Dr. Betz advised that appellant's metatarsalgia condition was possibly related to her previously diagnosed left foot contusion. He stated that it was hard to determine whether the condition was related to the noted work incident. Dr. Betz indicated that appellant had a cavus foot which was likely a contributing factor.

A December 8, 2008 x-ray report of the left foot from Dr. Keith M. Shonnard, a Board-certified radiologist, revealed postsurgical changes related to a bunionectomy and mild arthritic changes.

In treatment notes dated December 29, 2008 and January 6 and 20, 2009, Dr. L. Bruce Ford, a podiatrist, discussed appellant's complaints of pain involving the left foot following the metal rod dropping on it and appellant's medical, personal and family background. He listed his findings on physical and x-ray examination. Dr. Ford diagnosed foot pain, bursitis and bursitis of the second left toe metatarsal joint. In the December 29, 2008 treatment note, he noted the pain and swelling under appellant's second metatarsal joint. Dr. Ford advised that, upon palpation, there appears to be a bursa sack which was very tender. Appellant advised him that this condition developed after the metal bar dropped on her foot and grew worse over the past few weeks. Dr. Ford stated, "I suspect this was the cause of the problem."

By letter dated January 29, 2009, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit factual and medical evidence, including a rationalized medical report from an attending physician which described symptoms, examination and test results, diagnosis, treatment provided and opinion with medical reasons on why the diagnosed condition was caused by her federal employment.

In a February 21, 2009 letter, appellant described the alleged employment incident. A solid steel towing bar on a cage which was not secured by a tow driver fell on top of her foot. Appellant reported the injury to Eric Silverberg, a supervisor, who filed an injury report. She did not remember the date of injury. Appellant did not seek medical treatment because she thought her condition would improve. She was unaware that she would experience continuing problems. Appellant worked 8 to 12 hours per day standing and walking on floors that were made from a very hard material. The only time she was off her feet at work was during her 30-minute lunch and two 15-minute breaks. Appellant's foot hurt all the time but, considerably more when she was working.

By decision dated March 12, 2009, the Office denied appellant's claim, finding the medical evidence insufficient to establish that she sustained a left foot injury causally related to the established work-related factors.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of 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.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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.⁵ Neither the fact that appellant's condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish a causal relationship.⁶

¹ Following the issuance of the Office's March 12, 2009 decision, the Office received additional evidence. She also submitted additional evidence on appeal. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office with a formal written request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

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

⁶ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

ANALYSIS

Appellant claimed that she sustained left foot conditions in the performance of duty. She established the incident where a yellow cage connecting rod fell on her left foot and standing and walking on floors as employment factors that caused her condition. The Board finds, however, that the medical evidence submitted is insufficient to establish that her diagnosed left foot conditions were caused or aggravated by her established employment factors.

While Dr. Betz's December 8, 2008 reports reviewed a history of the left foot complaints and stated that appellant sustained metatarsalgia and contusion of the left foot, he did not provide a medical opinion addressing a causal relationship between the accepted employment factors and the diagnosed conditions. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.⁷ The Board finds that Dr. Betz's reports are insufficient to establish appellant's claim.

In another December 8, 2008 report, Dr. Betz listed his findings on physical examination and opined that appellant's metatarsalgia was "possibly" related to her left foot contusion. He stated that it was difficult to determine whether the diagnosed condition was related to the incident where her left foot was smashed under a gate at work several years prior. Dr. Betz advised that appellant's cavus foot was "likely" a contributing factor. He did not attribute her metatarsalgia condition to the established employment factors. Instead, Dr. Betz stated that the diagnosed condition was caused by appellant's left foot contusion which the record does not indicate was previously accepted by the Office as employment related.⁸ The record also does not establish that the gate smashing incident has been accepted by the Office as employment related.⁹ Moreover, Dr. Betz's opinion on causal relationship, through the use of the words "possibly" and "likely" are equivocal and are insufficient to meet appellant's burden of proof.¹⁰ The Board finds that Dr. Betz's December 8, 2008 report is insufficient to establish appellant's claim.

Dr. Shonnard's December 8, 2008 x-ray report did not provide an opinion addressing whether the diagnosed left foot conditions were causally related to the established employment factors. The Board finds therefore, that his report is insufficient to establish appellant's claim.

Dr. Ford's treatment notes dated December 29, 2008 to January 20, 2009 reviewed a history of the left foot complaints and appellant's medical, personal and family background. He listed his findings on physical and x-ray examination. Dr. Ford diagnosed foot pain, bursitis and bursitis of the second left toe metatarsal joint. In the December 29, 2008 treatment note, he stated, I "suspect" that what "appears" to be a bursa sack of the second metatarsal joint was caused by the metal bar falling on her foot, which became worse over the past couple of weeks. Dr. Ford did not explain how the diagnosed conditions were causally related to the accepted

⁷ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *Daniel O. Vasquez*, 57 ECAB 559 (2006); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ *Id.*

¹⁰ *Ricky S. Storms*, 52 ECAB 349 (2001); *Leslie C. Moore*, 52 ECAB 132 (2000).

employment factors, and furthermore, his opinion, through the use of the words “suspect” and “appears” are equivocal and are insufficient to meet appellant’s burden of proof.¹¹ The Board finds that his treatment notes are insufficient to her claim.

The Board finds that there is insufficient rationalized medical evidence to establish that appellant sustained a left foot condition causally related to the accepted factors of her federal employment as a clerk. Appellant did not meet her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a left foot injury while in the performance of duty, causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 12, 2009 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: April 22, 2010
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

¹¹ *Id.*