United States Department of Labor
Employees' Compensation Appeals Board

R.K., Appellant	)	
and	)	**Docket No. 09-1397**
	)	**Issued: February 3, 2010**
U.S. POSTAL SERVICE, HOUSTON PERFORMANCE CLUSTER, Houston, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 6, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 26, 2009 decision denying her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury causally related to factors of her federal employment.

FACTUAL HISTORY

On January 15, 2009 appellant, then a 57-year-old mail handler, filed an occupational disease claim alleging that on January 13, 2009 her right foot collapsed after working on a concrete floor eight hours a day five days a week. She stated that the employing establishment put her in a wheelchair and took her to her car, but did not provide any medical care. Appellant had broken her left foot on March 14, 2008 and that her right foot had to carry her weight for over nine months. She stopped work on January 13, 2009 and returned to work on February 2,

2009 with restrictions. Appellant submitted the return to work notes dated January 14 and 29, 2009 from Dr. W. Eric Pack, a podiatrist.

In a February 18, 2009 letter, the Office informed appellant that the evidence submitted was insufficient to establish her claim. It advised her to submit details regarding the employment duties or exposure she believed caused or contributed to her claimed condition and 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.

In a January 14, 2009 report, Dr. Pack noted positive pain elicited upon palpation of peroneal tendon sheath. An assessment of right ankle peroneal tendinitis was provided. Dr. Pack indicated that appellant was to be scheduled for a magnetic resonance imaging (MRI) scan to evaluate any soft tissue, ligamentous or bony damage. A January 23, 2009 MRI scan report indicated a small right ankle joint effusion and mild patchy bone marrow edema within the right cuboid. In a January 29, 2009 report, Dr. Pack stated that MRI scan findings were consistent with minimal bone marrow edema of the right cuboid. An assessment of bone marrow edema with arthralgia and capsulitis, right cuboid was provided. In a February 13, 2009 report, Dr. Pack noted that appellant experienced severe pain and spasm at work on her right foot. In a March 10, 2009 report, he noted positive pain elicited upon palpation of posterolateral right ankle and reiterated the diagnosis of arthralgia capsulitis and peroneal tendinitis. Copies of physical therapy reports were also provided.

By decision dated March 26, 2009, the Office denied appellant's claim finding that the evidence was insufficient to establish that she sustained a right foot condition in the performance of duty.[1]

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged,[3] and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4]

[1] The record contains additional evidence after the Office's March 26, 2009 decision and appellant submitted new evidence with her appeal. However, the Board may not consider evidence that was not before the Office at the time it rendered its final decision and has no jurisdiction to review new evidence on appeal. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration under 5 U.S.C. § 8128.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). When an employee claims that he or she sustained injury in the performance of duty the employee must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The employee must also establish that such event, incident or exposure caused an injury. *See also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (2002) (occupational disease or illness and traumatic injury defined).

[4] *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

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.[5] The medical 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.[6]

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.[7]

ANALYSIS

It is not disputed that appellant worked on a concrete floor daily as part of her duties as a mail handler. The Office denied her claim finding that the medical evidence did not establish that she sustained a right foot condition as a result of her work activities.

Dr. Pack provided multiple reports concerning appellant's right ankle. He diagnosed peroneal tendinitis, bone marrow edema with arthralgia and capsulitis of right cuboid and arthralgia capsulitis. However, Dr. Pack failed to provide any opinion explaining how such medical conditions were caused or contributed to by appellant's federal employment. 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.[8] Dr. Pack's reports are insufficient to establish that appellant's right foot condition is causally related to her duties as a mail handler.

The January 23, 2009 MRI scan report found right ankle joint effusion and mild patchy bone marrow edema within the right cuboid. The study did not, however, provide any opinion regarding the cause of the diagnosed condition. It is of limited probative value on the issue of causal relationship.[9] Appellant also submitted physical therapy records; however, a physical therapist is not a physician as defined under the Act.[10] The opinions of such health care

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

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

[7] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 4 at 218.

[8] *S.S.*, 59 ECAB ___ (Docket No. 07-579, issued January 14, 2008).

[9] *Willie M. Miller*, 53 ECAB 697 (2002).

[10] *See* 5 U.S.C. § 8101(2).

professionals are not considered competent medical evidence for purposes of determining disability or entitlement to benefits.[11]

Appellant was notified by Office letter dated February 18, 2009 that she was required to provide medical evidence containing a diagnosis and a physician's opinion regarding the cause of her injury. She failed to submit sufficient medical evidence supporting that her federal duties caused a right foot condition. Appellant has not established that she sustained an injury in the performance of duty.

On appeal, appellant contended that her supervisors slammed her wheelchair into the turntable doors as they were wheeling her out of the building and broke her right foot. To the extent that she is alleging a new traumatic injury, this aspect of her claim was not adjudicated by the Office. As noted, the record before the Office at the time of its March 26, 2009 decision contains insufficient medical evidence to establish that appellant's daily duties caused her right foot condition.

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[11] *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).