

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

D.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Grand Rapids, MI, Employer**

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**Docket No. 09-1528
Issued: February 2, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 May 12, 2009 appellant filed a timely appeal with the Board of September 25, 2008 and April 20, 2009 decisions of the Office of Workers' Compensation Programs denying her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant established that she sustained bilateral plantar fibromas in the performance of duty.

On appeal, counsel asserts that the Office's denial of the claim was "contrary to fact and law."

FACTUAL HISTORY

On July 9, 2008 appellant, then a 50-year-old distribution clerk, filed an occupational disease claim (Form CA-2) for bilateral plantar fibromas sustained in the performance of duty.

She first became aware of the condition and its possible relation to her federal employment on March 25, 2008. Appellant explained that walking 1,000 steps a day on concrete floors aggravated preexisting plantar fibromas which were previously under control following excision surgery in 1998. She stopped work on June 17, 2008.

Appellant submitted reports from attending podiatrists Drs. Terrence J. Emiley, Michael G. David and Michael J. Trompen. Dr. Emiley opined on June 3, 1999 that prolonged walking at work aggravated bilateral plantar fibromas. In a November 20, 2003 report, Dr. David diagnosed a recurrent plantar fibroma of the left foot. He opined that prolonged standing at work “could have” inflamed the preexistent fibroma. Dr. Trompen stated in a November 15, 2007 letter that appellant’s plantar fibromas could be aggravated by prolonged standing. However, appellant could perform her current sedentary position without difficulty.

In a June 19, 2008 report, Dr. John D. Maskill, an attending Board-certified orthopedic surgeon, noted that appellant worked sorting mail in a seated position. On examination, Dr. Maskill found a two by three centimeter (cm) nodule in the inner arch of the left foot and a one cm square nodule with smaller satellite lesions in the medial border of the right foot. He diagnosed bilateral plantar fibromas and prescribed orthotics. Dr. Maskill stated that plantar fibromas frequently recurred after surgery.

In a July 29, 2008 letter, the Office advised appellant of the type of medical and factual evidence needed to establish her claim. It emphasized the importance of submitting a rationalized report from her attending physician explaining how and why work factors would cause the claimed condition.

In a September 4, 2008 letter, the employing establishment contended that appellant exaggerated the amount of walking required. Appellant did not submit additional evidence.

By decision dated September 25, 2008, the Office denied the claim on the grounds that causal relationship was not established. It accepted that appellant’s duties required walking approximately 1,000 steps a day on concrete floors. However, appellant did not submit medical evidence supporting that the accepted work factors caused or aggravated any medical condition.

In an October 2, 2008 letter, appellant requested a telephonic hearing, held February 18, 2009. The hearing representative noted that the Office denied appellant’s two prior claims for plantar fibromas.¹ Appellant underwent excision surgery on one foot in 1997. She began work at the employing establishment in February 1998, then had excision surgery on both feet later that year. Appellant asserted that walking on concrete floors at work caused the regrowth of fibromas in both feet. She was on modified sedentary duty beginning in 2003 due to accepted right carpal tunnel syndrome.² The hearing representative advised appellant of the additional medical evidence needed to establish her claim.

¹ On August 30, 2003 appellant filed an occupational disease claim for plantar fibromas under File No. xxxxxx458. She filed a second claim for plantar fibromas on May 28, 2006 under File No. xxxxxx020. These claims are not before the Board on the present appeal.

² File No. xxxxxx061. This claim is not before the Board on the present appeal.

After the hearing, the employing establishment submitted June 15 and 27, 2008 work restrictions from Dr. Maskill, limiting appellant to sedentary work with no standing, walking or climbing. The employing establishment asserted that it complied with these restrictions.

By decision dated and finalized April 20, 2009, the Office denied modification, finding that the medical evidence was insufficiently rationalized to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 filed within the applicable time limitation; that an injury was sustained while 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

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) 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 causal relationship is generally 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.⁶

ANALYSIS

Appellant claimed that she sustained bilateral plantar fibromas due to walking on concrete floors at work on or before March 25, 2008. She submitted a June 3, 1999 medical report from Dr. Emiley, an attending podiatrist, opining that prolonged walking at work

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

aggravated plantar fibromas, but he did not explain how or why walking on concrete would cause or aggravate the claimed condition. His opinion is insufficiently rationalized to establish causal relationship.⁷

Dr. Maskill noted on June 19, 2008 that plantar fibromas frequently recurred after surgery. He provided June 15 and 27, 2008 restrictions limiting appellant to sedentary work with no walking but did not explain how or why walking on concrete floors at work would cause or aggravate appellant's plantar fibromas. This lack of rationale diminishes the probative value of his report in establishing the claimed causal relationship.⁸

Dr. David and Dr. Trompen both stated that prolonged standing at work could have aggravated the preexisting plantar fibromas. The speculative nature of these opinions reduces their probative value.⁹ Also, Dr. Trompen opined that appellant was able to perform her sedentary position without difficulty. This tends to negate appellant's assertion that work factors caused or aggravated plantar fibromas.

The Board notes that appellant was advised by a July 29, 2008 letter, and at the hearing, of the necessity of submitting medical evidence explaining how and why work factors would cause or contribute to the claimed plantar fibromas. Appellant did not submit such evidence; therefore, she failed to meet her burden of proof in establishing causal relationship.

On appeal, counsel asserts that the Office's denial of appellant's claim was "contrary to fact and law." As stated, appellant did not submit sufficient rationalized medical evidence establishing a causal relationship between walking on concrete floors at work and the claimed bilateral plantar fibromas. Therefore, the Office's denial of the claim was appropriate under the facts and circumstances of this case.

CONCLUSION

The Board finds that appellant has not established that she sustained bilateral plantar fibromas in the performance of duty.

⁷ *Deborah L. Beatty*, 54 ECAB 340 (2003) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁸ *Id.*

⁹ *T.M.*, 60 ECAB ____ (Docket No. 08-975, issued February 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 20, 2009 and September 25, 2008 are affirmed.

Issued: February 2, 2010
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