

On March 9, 2009 Dr. Travis Piper, a podiatrist, presented findings on examination, reviewed appellant's history of injury and diagnosed hammertoes of the right fourth and fifth digits with exostosis in the right medial fifth digit.

By report (Form CA-20) dated June 10, 2009, Dr. Piper presented findings on examination and diagnosed hammertoes.

On September 10, 2009 Dr. Piper opined that appellant's condition, hammertoes, were of congenital origin but "may be aggravated by long periods of walking."

By decision dated October 6, 2009, the Office denied the claim because the evidence of record did not demonstrate the established employment factors caused a medically-diagnosed condition.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of proof to establish the essential elements of his claim by the weight of the evidence,³ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁴ As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

Under the Act, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete

¹ Appellant requested reconsideration before the Office on January 7, 2010. The Office had not issued a decision regarding this request for reconsideration as of the date of this appeal.

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁷ *Raymond W. Behrens*, 50 ECAB 221, 222 (1999); *James L. Hearn*, 29 ECAB 278, 287 (1978).

factual and medical background of the employee, 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 employee.⁸

ANALYSIS

Appellant established the employment factors she deemed responsible for her condition. Her burden is to demonstrate these employment factors caused a medically-diagnosed condition. Causal relationship is a medical issue that can only be proven by probative medical opinion evidence. The Board finds that appellant has not submitted the requisite medical evidence based upon a complete factual background which explains how the established employment factors aggravated appellant's congenital hammertoe condition.⁹

Dr. Piper diagnosed hammertoes. He opined that this condition was of congenital origin. Dr. Piper also speculated that appellant's hammertoes "may be aggravated by long periods of walking." He, however, never documented a work history and never explained how physiologically her walking required by her job would have aggravated her congenital condition. While Dr. Piper speculated that appellant's work duties may have aggravated the condition, use of the word "may" indicates his opinion is speculative or equivocal and thus has diminished probative value.¹⁰ Therefore, Dr. Piper's reports and notes do not establish the required causal relationship.

An award of compensation may not be based on surmise, conjecture or speculation.¹¹ Appellant has not submitted sufficient medical evidence supporting her claim, evidence containing a reasoned discussion explaining how the established employment factors caused a medically-diagnosed condition.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty, causally related to her employment.

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ On appeal, appellant submitted additional evidence. 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). *See J.T.*, 59 ECAB 293 (2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision).

¹⁰ *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹¹ *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

ORDER

IT IS HEREBY ORDERED THAT the October 6, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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