

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

J.T., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
TRANSPORTATION SECURITY
ADMINISTRATION, Los Angeles, CA, Employer**

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**Docket No. 10-2370
Issued: August 3, 2011**

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 September 27, 2010 appellant filed a timely appeal from a June 24, 2010 decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for compensation. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

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

On appeal, appellant contends that, due to her job requirements, her original injury did not heal properly. She contended that the medical evidence established that she had permanent damage and tendinitis but was denied medical attention.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 23, 2010 appellant then a 39-year-old transportation security officer, filed a claim alleging that on March 22, 2010 she sustained a recurrence of a disability due to a December 29, 2009 employment injury.² She had returned to work with no limitations after the initial injury but continued to work with extreme pain which progressed and she requested easier job assignments. Appellant noted that her injury was to her foot and ankle. She noted that, after she returned to work, she walked excessively through the workday which aggravated her condition.

In support of her claim, appellant submitted various reports from the South Bay Family Medical Group. In a December 30, 2009 report, Dr. Richard Zhen Lu, a Board-certified internist, noted pain in limb, status post work-related injury and right foot and ankle pain. He obtained a history of a December 28, 2009 injury sustained when a heavy bag landed on appellant's right foot and ankle. In a January 13, 2010 report, appellant was released to return to work with no restrictions. In a March 22, 2010 report, Dr. Scott Tong, a Board-certified family practitioner, assessed her with pain in her limb and prescribed medication. He noted that appellant has had right foot ankle pain since a December 2009 incident when an 80-pound bag fell on her. In an accompanying work capacity evaluation, Dr. Tong took her off work from March 22 through April 15, 2010. In an April 14, 2010 report, he assessed: "[ankle] [injury] [c]omments: occurred at work in LAX." Dr. Tong conducted a musculoskeletal examination of the right ankle and noted some tenderness in the lateral malleolus. In a March 22, 2010 supplemental report, the South Bay Family Medical group indicated that appellant was off work due to right ankle and foot pain.

A magnetic resonance imaging (MRI) scan was obtained on April 2, 2010. It was interpreted by Dr. David N. Stone as follows: At the lateral malleolus there was magnetic susceptibility artifact that suggested prior trauma; at the lateral malleolus the talofibular ligament was not seen and might be torn; and to the posterior there was a prominent os trigonum with irregularity at the synchondrosis.

In a May 26, 2010 memorandum, the claims examiner noted appellant's claim of a recurrence of disability on March 23, 2010. Appellant had a prior claim of traumatic injury to her right foot and ankle on December 28, 2009. Although she stopped working on the date of injury, the medical evidence provided a diagnosis of pain in the limb and that appellant could return to work full duty without restrictions on January 20, 2010. Appellant now claimed that she performed excessive walking which caused her foot to be aggravated, this constituted a claim of a new injury and not a recurrence of disability. Accordingly, OWCP adjudicated her claim as a new occupational disease claim.

By decision dated June 24, 2010, OWCP denied appellant's claim. It found that, although she established that excessive walking occurred, the medical evidence did not establish that her right ankle and foot condition was caused or aggravated by the established work events.

² OWCP accepted that on December 28, 2009 appellant sustained right ankle and foot contusions when a bag fell from a cart hitting her right ankle and landing on top of her right foot. It assigned File No. xxxxxx539. OWCP paid medical expenses and closed the file. It subsequently combined that file with the current file number.

LEGAL PRECEDENT

An employee seeking compensation under FECA³ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,⁴ including that she is an “employee” within the meaning of FECA⁵ and that she filed her claim within the applicable time limitation.⁶ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁷ 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.⁸

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁹

Causal relationship is a medical issue¹⁰ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,¹¹ must be one of reasonable medical certainty,¹² and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹³

³ 5 U.S.C. §§ 8101-8193.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁵ *See M.H.*, 59 ECAB 447 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *See* 5 U.S.C. § 8101(1).

⁶ *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O’Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁷ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

¹⁰ *Mary J. Briggs*, 37 ECAB 578 (1986).

¹¹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹² *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹³ *See William E. Enright*, 31 ECAB 426, 430 (1980).

A recurrence of disability means an inability to work after an employee has returned to work caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.¹⁴

ANALYSIS

Appellant alleged that, on March 22, 2010, after returning to regular work following a December 28, 2009 employment injury, she sustained a recurrence of disability to her right foot and ankle due to excessive walking in her work as a transportation security officer. To the extent that appellant's disability was aggravated by new employment exposure, any resulting disability would be considered a new injury and not a recurrence.¹⁵ The Board notes that OWCP properly adjudicated appellant's claim as one for a new occupational disease based on excessive walking in her federal employment.

The Board finds that appellant has not submitted sufficient medical evidence in support of her claim. The medical evidence of record does not establish that appellant sustained a new injury as a result of extensive walking after her return to work.

The record indicates that appellant was released to return to work following the injury December 2009 with no restrictions as of January 13, 2010. Subsequently, Dr. Tong's reports addressed appellant's right foot pain since the December 28, 2009 employment injury and reviewed a history of the original traumatic injury. The March 22, 2010 report from South Bay Medical Group indicated that appellant was seen for right ankle and foot pain. Neither of these reports discuss appellant's claim of extensive walking or whether her present condition was related to this employment factor. The MRI scan report of April 2, 2010 does not address causal relationship. Accordingly appellant has not submitted adequate rationalized medical evidence to establish that she was injured as a result of extensive walking in her federal employment.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹⁶ An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.¹⁷ OWCP properly denied appellant's claim for compensation.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹⁴ 20 C.F.R. § 10.5(x).

¹⁵ *L.M.*, Docket No. 10-464 (issued November 18, 2010).

¹⁶ *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁷ *D.D.*, 57 ECAB 734 (2006).

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, causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 24, 2010 is affirmed.

Issued: August 3, 2011
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