

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

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M.S., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Cleveland, OH, Employer )

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**Docket No. 11-946  
Issued: December 28, 2011**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
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 March 7, 2011 appellant filed a timely appeal from a February 3, 2011 Office of Workers' Compensation Programs' (OWCP) decision which affirmed the denial of appellant's claim for compensation. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) 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 was totally disabled beginning December 4, 2008 causally related to her accepted employment condition.

**FACTUAL HISTORY**

On April 2, 2009 appellant, then a 29-year-old letter carrier and acting supervisor, filed an occupational disease claim alleging that she developed bunions and plantar fasciitis as a result of prolonged standing required as part of her work duties. She became aware of her condition on

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

January 1, 2006 and realized it was causally related to her employment on July 1, 2008. Appellant stopped work on December 4, 2008 and went on leave. OWCP accepted her claim for bilateral plantar fibromatosis.<sup>2</sup> Appellant retired on October 12, 2010.

Appellant was treated by Dr. Stanley Beekman, a podiatrist. In an attending physician's report dated April 1, 2009, Dr. Beekman noted findings of pain on palpation of the bilateral heels and diagnosed plantar fasciitis. He indicated that appellant's condition was caused or aggravated by a work activity. Dr. Beekman noted that she was a mail carrier and walking was a major part of her job. He determined that appellant was totally disabled from March 5, 2009 but was advised on March 5, 2009 that she could return to work. Appellant came under the treatment of Dr. Ryan B. Golub, a podiatrist, from March 5 to October 26, 2009, for chronic bilateral foot pain that began when she performed her duties as a letter carrier. She reported developing bunions in both feet and hammertoes as a child but her current symptoms worsened working as a letter carrier. On April 1, 2009 Dr. Golub diagnosed bilateral hallux abductovalgus deformity, bilateral hammertoes at two, three, four and five, bilateral severe plantar fasciitis and bilateral flexible pes planus deformity. In a June 29, 2009 report, he noted that x-rays revealed moderate bunion deformities bilaterally, severe hammertoes and flattening of the arches which created significant pain. Dr. Golub opined that appellant's mail carrier duties contributed to these conditions. In treatment notes dated September 23 to October 26, 2009, he opined that her foot deformities and chronic pain developed as a result of appellant's work-related activity. Dr. Golub noted that appellant was a mail carrier for many years. Appellant's pain was exacerbated causing her to stop work. He diagnosed chronic severe plantar fasciitis, flexible pes planus deformity bilaterally and severe bunions bilaterally. In an October 26, 2009 attending physician's report, Dr. Golub diagnosed severe bunion deformity bilaterally. He reiterated that appellant's condition was caused by work activity noting that appellant's job as a mail carrier contributed to worsening of symptoms and enlargement of bunions on her feet. Dr. Golub recommended surgery and noted that appellant's period of total disability was unknown.

On November 14, 2009 appellant submitted a CA-7 form, claiming compensation for total disability for the period February 28 to November 6, 2009.

In a letter dated December 3, 2009, OWCP requested that appellant submit additional information with regard to her claim for compensation. It requested she submit medical evidence establishing that she was totally disabled due to the accepted condition for the period claimed.

In an undated statement, appellant noted that she stopped work as an acting supervisor on December 4, 2008 due to personal issues. In July 2008, her husband transferred to Arizona and she requested a transfer but the employing establishment could not accommodate her. Appellant found a carrier who was interested in a mutual exchange and took leave on December 4, 2008 believing the exchange to be complete; but the mutual exchange failed as the other carrier pulled out on January 16, 2009. By the end of January, she could not wear a covered shoe and stopped work and relocated to Arizona. Appellant submitted treatment notes from Dr. Golub dated

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<sup>2</sup> OWCP noted that the evidence was insufficient to show that appellant had bunions causally related to her work duties.

January 25 to May 13, 2010 who recommended orthotics and surgery. Dr. Golub advised that appellant stopped work on December 4, 2008 due to chronic foot pain which prohibited her from performing her work duties. He opined that she would not have been able to continue working as an acting supervisor after December 8, 2008 given the worsening foot pain. Dr. Golub noted that appellant's bunions were caused by excessive activity at work.

In a decision dated August 20, 2010, OWCP denied appellant's claim for compensation for total disability for the period February 28 to November 6, 2009.

On August 31, 2010 appellant requested a telephonic oral hearing which was held on December 7, 2010. She testified that she stopped work on December 4, 2008 due to issues with her feet as she could not wear a covered shoe or stand for any length of time without her feet swelling. Appellant also stated that she stopped work on December 4, 2008 due to personal issues because her husband relocated to Arizona. She started work as an acting supervisor in July 2007 to help her foot condition. Appellant advised that no physician told her to stop work in December 2008, although a previous treating physician suggested that she consider changing careers. The first physician to tell her to stop work was Dr. Beekman in March 2009. The hearing representative requested that appellant submit within 30 days records from previous physicians that treated her foot condition.

Appellant submitted reports from Dr. Golub dated June 28 to November 29, 2010. She reported a history of low back problems including a fracture when she was a child. Dr. Golub opined that it was possible that appellant's symptoms in her feet were the result of a lower back problem and lumbar radiculopathy. In a November 29, 2010 report, he opined that her position contributed to the formation of bunion deformity due to the extensive amount of time she was required to be on her feet. Dr. Golub noted that appellant's job required standing or walking up to eight hours a day and opined that because of the level of discomfort and disability she was experiencing she would not be able to work from February 28 to November 6, 2009 due to chronic bilateral foot pain. In a November 29, 2010 attending physician's report, he diagnosed bunion deformities and noted with a checkmark "yes" that appellant's condition was caused by an employment activity and noted extended time on appellant's feet caused worsening pain symptoms. Dr. Golub noted a period of total disability from February 28, 2009 to the present.

In a decision dated February 3, 2011, the hearing representative affirmed the August 30, 2010 decision finding that appellant did not establish disability beginning December 4, 2008 caused by her accepted condition. The hearing representative noted that appellant had not submitted pertinent medical records from physicians who treated her before December 4, 2008.

### **LEGAL PRECEDENT**

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.<sup>3</sup> Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.<sup>4</sup> The issue of

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<sup>3</sup> See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>4</sup> *Id.*

whether a particular injury causes disability for work must be resolved by competent medical evidence.<sup>5</sup> To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.<sup>6</sup>

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>7</sup>

### ANALYSIS

OWCP accepted appellant's claim for bilateral plantar fibromatosis. Appellant stopped work on December 4, 2008 and did not return. In an undated statement, she stated that she stopped work for personal reasons. In her hearing testimony, appellant stated that she stopped work due to her bilateral foot condition, her husband's transfer, and for other personal reasons. The Board finds that the medical evidence is insufficient to establish that she sustained disability commencing December 4, 2008 caused or aggravated by the accepted bilateral plantar fibromatosis.

Appellant submitted an April 1, 2009 attending physician's report from Dr. Beekman who diagnosed work-related plantar fasciitis and advised that she was totally disabled from March 5, 2009. However, Dr. Beekman also indicated in the same report that she could work. In any event, he did not provide any medical rationale<sup>8</sup> explaining why appellant was totally disabled on or after December 4, 2008 because of her accepted bilateral plantar fibromatosis. Therefore, this report is insufficient to meet her burden of proof.

Appellant submitted several reports from Dr. Golub. In his October 26, 2009 report, Dr. Golub opined that her foot deformities and chronic pain developed as a result of her work-related activity. He noted that prior to appellant's disability in 2008 she was a mail carrier for many years and her pain was exacerbated causing her to stop work. Dr. Golub diagnosed chronic severe plantar fasciitis, flexible pes planus deformity bilaterally and severe bunions bilaterally. Similarly, in his January 26, 2010 report, he indicated that appellant stopped work on December 4, 2008 due to chronic foot pain. Dr. Golub also noted that her bunions were caused by excessive activity at work. In a November 29, 2010 report, he opined that appellant's position contributed to her bunions due to the prolonged standing required by her job. Dr. Golub

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<sup>5</sup> See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>6</sup> C.S., Docket No. 08-2218 (issued August 7, 2009).

<sup>7</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>8</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

noted that she was unable to work from February 28 to November 6, 2009 due to chronic bilateral foot pain. Although these notes indicated that appellant had disability for work on or after December 4, 2008, he failed to provide a reasoned opinion explaining why she was disabled for any particular period due to the accepted work injury. Rather, Dr. Golub partially attributed appellant's disability to bunions, a condition not accepted as work related.<sup>9</sup> He did not explain why the accepted bilateral plantar fibromatosis caused or aggravated disability on or after December 4, 2008. As noted, part of appellant's burden of proof includes submitting rationalized medical evidence which supports a causal relationship between the alleged disabling condition and the accepted injury.

In attending physician's reports dated October 26 and November 29, 2010, Dr. Golub stated that appellant was totally disabled beginning February 28, 2009 but he did not specifically relate the disability to the accepted bilateral plantar fibromatosis. In a September 8, 2010 note, he noted her history of a back fracture as a child and opined that it was possible that her foot symptoms resulted from her lower back problem. This report did not support that appellant's accepted bilateral plantar fibromatosis rendered her totally disabled for any particular period. Other reports from Dr. Golub did not specifically address the cause of her claimed disability on or after December 4, 2008. Consequently, these reports are insufficient to establish that disability, on or after December 4, 2008, is causally related to the accepted bilateral plantar fibromatosis.

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.

### **CONCLUSION**

The Board finds that appellant has failed to establish that her disability for the period February 28 to November 6, 2009 is causally related to the accepted employment injury.

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<sup>9</sup> OWCP has not adjudicated whether any bunion condition is employment related. Therefore, the Board has no jurisdiction with regard to whether this condition is due to appellant's employment. See 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 3, 2011 is affirmed.

Issued: December 28, 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