



## **FACTUAL HISTORY**

On August 31, 2009 appellant, then a 66-year-old expeditor, filed an occupational disease claim alleging that she sustained a bilateral foot condition due to standing on her feet eight hours a day at work. She first became aware of her condition on June 18, 1997 but did not realize that it was a result of her employment until September 29, 2009. In a supplemental statement, appellant related that she was first diagnosed with heel spurs in 1997 by Dr. Brent E. Tabor, a podiatrist. She listed several other physicians she had seen for treatment and a July 22, 2009 surgery performed by Dr. Gary Feldman, a podiatrist. In a July 22, 2009 postoperative report, Dr. Feldman noted that surgery was performed on appellant's left Achilles. He diagnosed tendinitis bursitis of the Achilles tendon and a bone calcaneal spur.

In an October 23, 2009 letter, the Office advised appellant that the evidence she submitted was insufficient to establish her claim. It requested that she describe in detail the employment-related activities she believed contributed to her condition, including how often and for how long she performed these activities, list any activities she participated in outside of her federal employment which required the use of her lower extremities and provide information about any previous lower extremity orthopedic injuries, including diagnoses and procedures or treatments received. The Office also requested a comprehensive medical report from a treating physician which included a description of her symptoms, results of examinations and tests, diagnosis, treatment provided, effect of such treatment and an opinion, based on stated medical reasons, regarding whether her medical condition resulted from factors of her federal employment.

On November 3, 2009 appellant responded that she was diagnosed and treated for plantar fasciitis, had arthroscopic surgery on her right knee on May 11, 2007, and had received vein ablation treatment on both legs since December 24, 2007. She described working at window services, conveyer belts, bulk mail acceptance, flat sorter machines, and as a bar code sorter and general expeditor. Appellant's duties generally required standing, walking, lifting parcels and heavy materials, sorting mail through machines and monitoring or tracking postal motor vehicle drivers and contractors to and from stations and branches within the metro area. She performed these services full time, eight hours a day for 40 years.

In a June 29, 2009 report, Dr. Feldman reviewed appellant's medical history, noted that a recent magnetic resonance imaging (MRI) scan and x-rays revealed a very large calcaneal bone spur to the posterior calcaneus and a large cystic lesion to the distal tibial region. On examination, he noted extensive swelling to the left ankle, restriction of ankle joint extension to five degrees secondary to pain and an extremely large lipoma-type structure posterior to the fibula, left greater than right. Dr. Feldman's diagnosed osteochondritis dissecans (OCD) or bone cyst distal tibia with pain, a likely lipoma of both ankles, or a severe calcaneus bone spur with Achilles tendinitis. He provided a total disability certificate dated June 29, 2009.

In a July 22, 2009 surgical report, Dr. Feldman described the procedure performed and diagnosed Achilles tendon hypertrophy with tearing and painful bone spur to the calcaneus, lipoma to the left ankle and distal tibial cyst with osteochondral lesion. He submitted additional progress reports dated July 29 to September 3, 2009.

By decision dated December 30, 2009, the Office denied appellant's occupational disease claim. It accepted that she performed prolonged standing and handling of heavy materials, but found that the medical evidence was insufficient to establish a causal relationship between her employment activities and her diagnosed foot condition.

On January 8, 2010 appellant requested reconsideration and submitted a January 5, 2010 medical report from Dr. Feldman. She had exquisite tenderness to the anterior ankle, distal lower leg and Achilles region with an extremely large lipomatous lesion to the proximal lateral ankle. Dr. Feldman reviewed appellant's MRI scan or diagnostic studies and x-rays, which revealed a large calcaneal bone spur to the posterior calcaneus and a large cystic lesion to the distal tibial region. He diagnosed left foot bone spur and stated that prolonged standing aggravated this condition.

In a February 16, 2010 decision, the Office denied modification of the December 30, 2009 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative and substantial evidence<sup>3</sup> including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.<sup>4</sup> In an occupational disease claim, appellant's burden requires submission of the following: (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.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>6</sup> 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 specified employment factors or incident.<sup>7</sup> The opinion of the physician must be based on a

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>4</sup> *M.M.*, 60 ECAB \_\_\_ (Docket No. 08-1510, issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *D.U.*, 61 ECAB \_\_\_ (Docket No. 10-144, issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>6</sup> *I.R.*, 61 ECAB \_\_\_ (Docket No. 09-1229, issued February 24, 2010); *W.D.*, 61 ECAB \_\_\_ (Docket No. 09-658, issued October 22, 2009); *D.I.*, 59 ECAB 158 (2007).

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

complete 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.<sup>8</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that an employee's condition surfaced during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>9</sup> The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.<sup>10</sup>

### ANALYSIS

The Office accepted that appellant's employment duties required prolonged standing, walking and lifting of heavy materials. It denied her claim finding that the evidence of record did not establish that her diagnosed bilateral foot conditions were causally related to the accepted employment factors. The Board finds that appellant did not meet her burden of proof to establish her claim.

Dr. Feldman advised that appellant was treated and underwent surgery for various conditions, including bone spurs, bone cysts and an Achilles tendon tear. He reported that she was recovering well from her surgery and that she exhibited excellent bilateral strength and little discomfort upon flexion and extension of her ankle. While Dr. Feldman detailed the progression of appellant's foot conditions, he did not adequately explain how the accepted factors of her employment caused or contributed to her foot conditions. Rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician.<sup>11</sup> Dr. Feldman did not discuss how appellant's postal service duties, such as walking, standing, or heavy lifting, caused or aggravated the diagnosed conditions.<sup>12</sup> Appellant was advised in the Office's October 23, 2009 letter of the need of a comprehensive medical report addressing causal relationship but did not provide the requested evidence. The Board finds that these reports are of probative value because they do not contain a rationalized medical opinion regarding the cause of appellant's foot condition.<sup>13</sup>

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<sup>8</sup> *D.S.*, 61 ECAB \_\_\_ (Docket No. 09-860, issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007).

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

<sup>10</sup> *Patricia Bolleter*, 40 ECAB 373 (1988).

<sup>11</sup> *J.J.*, 60 ECAB \_\_\_ (Docket No. 09-27, issued February 10, 2009); *Solomon Polen*, 51 ECAB 341 (2000).

<sup>12</sup> *C.B.*, 61 ECAB \_\_\_ (Docket No. 09-2027, issued May 12, 2010); *A.C.*, 60 ECAB \_\_\_ (Docket No. 08-1453, issued November 18, 2008)

<sup>13</sup> *K.W.*, 59 ECAB 271 (2007); *Michael E. Smith*, 50 ECAB 313 (1999).

On January 5, 2010 Dr. Feldman reiterated the diagnosis of left foot bone spur and stated that prolonged standing aggravated this condition. He failed to provide a complete factual background supporting causal relationship.<sup>14</sup> Dr. Feldman only identified one employment factor, prolonged standing, but failed to address how long or how often appellant had engaged in this employment activity or adequately explain how prolonged standing would have physiologically aggravated appellant's bilateral foot condition. A rationalized medical opinion must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or injury.<sup>15</sup> Without a complete factual background and sufficient rationale, Dr. Feldman's opinion on causal relationship is of diminished probative value.

As noted the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. The question of causal relationship is a medical one and must be resolved by probative medical evidence.<sup>16</sup> The medical evidence of record does not contain probative medical opinion discussing how appellant's foot conditions were caused or aggravated by the work factors of her employment. Appellant has not met her burden of proof to establish that she sustained a bilateral foot condition in the performance of duty.<sup>17</sup>

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that her bilateral foot condition was causally related to factors of her employment.

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<sup>14</sup> *I.R.*, 61 ECAB \_\_ (Docket No. 09-1229, issued February 24, 2010); *K.E.*, 60 ECAB \_\_ (Docket No. 08-1461, issued December 17, 2008).

<sup>15</sup> *J.J.*, 60 ECAB \_\_ (Docket No. 09-27, issued February 10, 2009); *Charles W. Downey*, 54 ECAB 421 (2003).

<sup>16</sup> *D.I.*, 59 ECAB 158 (2007); *Margaret Carvello*, 54 ECAB 498 (2003).

<sup>17</sup> The Board notes that appellant submitted additional evidence to the file following the February 16, 2010 decision. Since the Board's jurisdiction is limited to evidence that was before the Office at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 16, 2010 and December 30, 2009 are affirmed.

Issued: February 7, 2011  
Washington, DC

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

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

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