



years that he had been working for the employing establishment. He first became aware of the injury and its relation to his work on July 5, 2006. Appellant did not stop work.

In support of his claim, appellant submitted a July 21, 2006 report from Dr. Ronnie D. Shade, a Board-certified orthopedic surgeon, who noted that appellant was initially seen in his office for bilateral foot pain on July 5, 2006. Dr. Shade noted that appellant related that he engaged in prolonged standing while working for the employing establishment during the past 12 years. He noted that the job included walking and standing on hard concrete, while loading, unloading and removing mail from mail trucks. Dr. Shade stated that appellant currently worked as a mail handler noting that, as he continued his assigned duties, "pain and symptoms worsened with increased pain associated with prolonged standing." He diagnosed metatarsalgia, bilateral great toes of the metatarsal phalangeal (MTP) joint, left greater than right; bilateral pes planus and bilateral plantar fasciitis. Dr. Shade advised that appellant continued to have symptoms including progressive pain and joint stiffness in both feet. He recommended steroid injections, custom shoes and referral to a foot specialist. Dr. Shade opined that "the mechanism of injury is causally related to the injury that the patient sustained. It is felt that the injury [appellant] sustained caused bilateral foot pain. Again, it is my strong opinion that the injury which this patient has sustained is directly causally related to his injury on July 5, 2006."

In a statement received by OWCP on August 17, 2006, appellant noted working for the employing establishment since September 3, 1994 as a mail handler on the west inbound docks. His duties included unloading mail trucks containing various parcels and standing for prolonged periods on concrete floors. Appellant explained that he started at the employing establishment with a veteran's disability for pes planus (flat feet) and arthritis in his left big toe. He alleged that the prolonged walking and standing on concrete floors during the first six years aggravated his foot condition and caused more damage to his feet. Appellant indicated that he could no longer stand more than one hour a day due to continuing foot pain. He stated that arch supports were ineffective and that permanent damage to his feet had occurred.

On August 17, 2006 the employing establishment also submitted a statement from Vital B. Boyce, a supervisor of mails, who noted that there were no positions that required an employee to stand or walk for prolonged periods. Additionally, employees were allowed downtime where they were allowed to sit and given liberal breaks in addition to scheduled breaks and lunch. Mr. Boyce indicated that appellant had filed several claims for conditions that he had prior to his employment. He alleged that appellant would file "fraudulent" claims when he did not get his way and was on light or limited duty most of his career. Additionally, Mr. Boyce explained that, during the last four years, appellant was not doing "all of the walking that he is alleging to have done." He noted that most of appellant's jobs were sit down jobs that required little or no walking. Furthermore, Mr. Boyce noted that he had supervised appellant during the last four months and observed that most of the walking appellant did was during his frequent smoking breaks. He advised that, since April 21, 2006, appellant's position allowed him to sit except for authorized breaks, when he walked to the break area, personal breaks, smoke breaks, lunch breaks and when leaving the building going home. Mr. Boyce stated that he did "not have any records dating further than 2003."

In a letter dated August 31, 2006, OWCP requested additional factual and medical evidence from appellant. It also requested that he explain why he did not file a claim until after 12 years of service if he believed his condition began after 6 years of service.

In a September 27, 2006 letter, Shirley Johnson, an injury compensation specialist, stated that appellant had not performed his bid job since 1997. She explained that he had several injuries that required restrictions. Ms. Johnson noted that, after an injury on March 9, 2005, appellant worked in a sedentary job in the rewrap area with a five-pound lifting limit.

In an October 4, 2006 statement, appellant explained that, for the past three years, he worked in the rewrap section with duties that included repairing damaged letters and packages, retrieving containers of damaged mail and moving containers and repaired mail to appropriate areas. He explained that it required him to be on his feet, on and off, throughout the day. Appellant explained that during the past three years he was off work from August 3, 2003 to December 2004 for a back injury and for right shoulder surgery, and from October 5, 2005 to April 2006 for right thumb and carpal tunnel surgery. He explained that in March 2005 his foot pain worsened. Appellant noted that, after several doctor appointments, orthopedic shoes, and surgeries, his doctor explained that his 12 years at the employing establishment working on the concrete floors contributed to his condition. He indicated that the only activities he participated in outside work were physical therapy for his back, shoulders and wrists and hands. Appellant noted that he had taken a couple of college courses, mostly telecourses and self-pace classes. He explained that he did not engage in sports, other employment, volunteer work or any other activities. Appellant also noted that he was being fitted with special shoes.

By decision dated October 4, 2006, OWCP denied appellant's claim finding that he had not submitted sufficient factual evidence to establish that the employment incidents occurred as alleged. It also found that he did not submit the necessary medical evidence.

In an October 27, 2006 report, Dr. Shade diagnosed metatarsalgia, bilateral great toes (MTP) joint, left greater than right, pes planus bilateral and plantar fasciitis, bilateral. He opined that appellant's bilateral foot diagnoses were preexisting and his job duties aggravated and accelerated the underlying bilateral foot problem.

Appellant requested reconsideration of OWCP's October 4, 2006 decision on November 3, 2006. On June 4, 2008 OWCP denied his request for reconsideration on the grounds that the evidence was insufficient to warrant a merit review. On May 13, 2009 the Board issued an order remanding case.<sup>2</sup> The Board found that OWCP's delay of over one and one half years in issuing a decision on appellant's reconsideration request effectively precluded him from appealing OWCP's most recent merit decision on his claim to the Board.<sup>3</sup> The Board remanded the case to OWCP to issue an appropriate decision on the merits of the claim in order to preserve his appeal rights.

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<sup>2</sup> Docket No. 08-2400 (issued May 13, 2009).

<sup>3</sup> *Geoma R. Munn*, 50 ECAB 242 (1999); *Debra E. Stoler*, 43 ECAB 561 (1992); *Carlos Tola*, 42 ECAB 337 (1991) (remanding case for merit review where OWCP delayed issuance of reconsideration decisions).

In a June 1, 2009 decision, OWCP denied modification of its October 4, 2006 decision.

On May 5, 2010 appellant requested reconsideration. He noted that his claim was an occupational disease, not a traumatic injury. Furthermore, appellant noted OWCP's finding that in 1997, he was given a modified position that limited him to intermittent standing and restricted him to lifting up to 25 pounds was incorrect. He provided a copy of his duty status report at the time and explained that the only restriction he had was a 25-pound lifting limitation. Appellant indicated that he was "still able to stand/walk for eight hours a day or more in which I did until I received another modified job after injuring my back in 2000, which put my standing/walking limits to one hour." He indicated that OWCP's decision was inaccurate and should be overturned.

By decision dated August 9, 2010, OWCP denied modification of the prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained 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.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

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) a 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.

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>6</sup> Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain

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<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *Gregory J. Reser*, 57 ECAB 277 (2005); *R.T.*, Docket No. 08-408 (issued December 16, 2008).

medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.<sup>7</sup>

The medical evidence required to establish causal relationship, generally, is 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.<sup>8</sup>

### ANALYSIS

Appellant alleged that his preexisting foot condition was aggravated by factors of his employment which involved working on concrete floors and included walking and standing on concrete for 6 years out of the 12 years that he had been working for the employing establishment. OWCP denied the claim finding that he had not established the events occurred as alleged and because the medical evidence did not relate his condition to the claimed events. The Board finds, however, that there is no evidence refuting that the claimed employment factor -- working on concrete floors at work for the first 6 out of 12 years of employment -- occurred. The employing establishment controverted the claim, and provided a statement from appellant's supervisor, Mr. Boyce, who noted that none of the positions required an employee to stand or walk for prolonged periods. Mr. Boyce also indicated that during the last four years appellant was "not doing all of the walking that he is alleging to have done." The Board notes that appellant is alleging that most of his walking occurred during the first 6 out of his 12 years of employment. Mr. Boyce also noted that there were no records prior to 2003. He also alleges that he continued to engage in some walking on his job thereafter. Appellant explained that, after his first six years, while his walking may not have been as much as initially, the damage was already done. There is no credible evidence that he did not engage in walking and standing on concrete floors as part of his job. Consequently, the Board finds that appellant has established that he worked on concrete floors at work for the first six years of his employment and intermittently thereafter.

However, appellant has submitted insufficient medical evidence to establish that his foot condition was caused or aggravated by working on concrete floors or any other specific factors of his federal employment.

Although the medical records indicate that appellant was treated for bilateral foot pain, there is no discussion by a physician explaining how factors of his employment, such as working on concrete floors at work, particularly during the first six years of his employment, would have caused or contributed to his foot condition or aggravated a preexisting medical condition. The record contains no rationalized medical opinion explaining the cause of his foot condition.

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<sup>7</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>8</sup> *Id.*

OWCP informed appellant of the deficiencies in the medical evidence and what was needed to establish his claim in a letter dated August 31, 2006.

In a July 21, 2006 report, Dr. Shade explained that appellant related that he had engaged in prolonged standing, while working for the employing establishment to include walking and standing on hard concrete, while loading, unloading and removing mail from mail trucks during the past 12 years. He noted appellant's diagnoses and opined that "the mechanism of injury is causally related to the injury that the patient sustained. It is felt that the injury that [appellant] sustained caused bilateral foot pain. Again, it is my strong opinion that the injury which this patient has sustained is directly causally related to his injury on July 5, 2006." The Board notes that it is not clear what injury or occurrence that Dr. Shade references as having occurred on July 5, 2006. Although appellant noted first becoming aware of his condition on July 5, 2006, he did not identify a particular injury that occurred on that date. Dr. Shade also did not otherwise explain how particular work factors that he identified in his report would have caused or aggravated a diagnosed condition. For example, he did not explain the pathophysiological reasons why walking or standing on hard concrete caused or aggravated any of the diagnosed foot or toe conditions. Likewise, in his October 27, 2006 report, Dr. Shade opined that appellant's bilateral feet diagnoses were preexisting and his job duties aggravated and accelerated the underlying bilateral foot problem. However, he did not provide any opinion explaining how specific work duties caused or aggravated his diagnosed conditions. A medical opinion not fortified by medical rationale is of little probative value.<sup>9</sup> The need for medical rationale is especially important in this case where the record shows that appellant had preexisting pes planus and left big toe arthritis.

The Board has held that 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.<sup>10</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

As there is no rationalized medical evidence explaining why appellant's claimed foot conditions were caused or aggravated by employment factors, he has not met his burden of proof in establishing his claim.

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 not met his burden of proof in establishing that he sustained an injury in the performance of duty.

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<sup>9</sup> *S.D.*, 58 ECAB 713 (2007).

<sup>10</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 9, 2010 decision of the Office of the Workers' Compensation Programs is affirmed, as modified.

Issued: October 17, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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