United States Department of Labor
Employees' Compensation Appeals Board

C.V., Appellant	)	
and	)	**Docket No. 11-1842**
	)	**Issued: April 19, 2012**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PATROL, Douglas, AZ, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 8, 2011 appellant filed a timely appeal of the June 16, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her occupational disease claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant sustained left ankle and foot injuries causally related to factors of her federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

[2] On appeal, appellant submitted new evidence. The Board may not review new evidence on appeal. Appellant may submit this or other 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.

FACTUAL HISTORY

On March 15, 2011 appellant, then a 43-year-old, customs and border patrol officer, filed an occupational disease claim alleging that she had severe tendinitis in both feet and that standing at work aggravated her pain. She underwent two surgeries in 2010 on the same ankle and foot.

By letter dated March 25, 2011, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit medical evidence, including a rationalized medical opinion from an attending physician which described a history of injury and her symptoms and provided dates of examination and treatment, findings, test results, a diagnosis together with medical reasons on how the claimed work activities caused, contributed to or aggravated the diagnosed condition.

In an April 13, 2011 narrative statement, appellant related that during the past 24 months she suffered from excruciating pain for which she took medication. Standing was extremely painful and she advised management about her pain. Appellant worked in the port of entry command center where she usually had to work in the primary lane which did not allow her to sit as often as she did in another position at the command center. In October 2008, she applied for an intelligence officer position, but did not get the job. On several occasions appellant asked management to assign her to the passport control office where officers were allowed to sit more often. During her 14 years of service at the employing establishment, she had only been assigned to the passport control office five times. Each time she worked there, appellant was replaced and assigned to the primary lanes where she developed a terrible limp. She could not concentrate on her work due to pain and she would usually have to leave four hours after her shift started. The traveling public and her coworkers witnessed the pain in her face and limping. Despite undergoing physical and massage therapy, appellant still experienced pain. She underwent surgery on January 27 and November 12, 2010 to treat severe tendinitis bilaterally.[3] Appellant was advised by an attending physician that continued standing would render her disabled.

A December 15, 2009 medical report which contained the typed name of Dr. David P. Klein, a Board-certified radiologist, stated that a magnetic resonance imaging (MRI) scan of appellant's left ankle demonstrated a small osteochondral lesion involving the medial dome of the talus.

In reports dated December 2, 2008 through December 22, 2009, Dr. John G. Chiakmakis, a Board-certified podiatrist, noted appellant's complaint of recurrent left heel pain and pain at the base of the fifth metatarsal of her right and left foot. He noted that she had no history of trauma. Appellant worked eight hours a day on her feet as a law enforcement officer at the employing establishment. Dr. Chiakmakis obtained a history of her medical treatment. He listed findings on physical and x-ray examination and diagnosed recurrent plantar fasciitis, osteochondritis talus of the left foot, tendinitis peroneal brevis tendon of the right and left foot and resolving tendinitis in the left ankle. In prescriptions dated October 22 through December 22, 2009, Dr. Chiakmakis

[3] The record reveals that appellant actually underwent left ankle surgery on January 29, 2010.

advised that appellant could perform regular-duty work eight hours a day with restrictions through January 5, 2010.

In prescriptions dated January 5 and 26, 2010 and reports dated January 7, 2010 through March 24, 2011, Dr. Ladislav Kuchar, a podiatrist, advised that appellant had an osteochondral brevis lesion, osteochondritis dessicans and peroneal tendons of the left ankle. Appellant also had peroneal tendinitis, a peroneus brevis tear, plantar fasciitis/fibromatosis and hallux valgus of the left foot. Dr. Kuchar initially prescribed medication to treat appellant's conditions. On January 29, 2010 he performed an excision of the osteochondral lesion with subchondral drilling on the left ankle. Dr. Kuchar later prescribed physical therapy to treat appellant's left foot peroneal tendinitis. He advised that she could perform light-duty work from February 15 through May 8, 2010. In a June 29, 2010 prescription, Dr. Kuchar released appellant to work with no restrictions. In a January 4, 2011 report, he advised that she was status post left Austin bunionectomy. Appellant could return to work with restrictions. On April 13, 2011 Dr. Kuchar noted that he first evaluated her left foot and ankle pain on August 12, 2008 and described his treatment, including the January 29, 2010 left ankle surgery and November 12, 2010 left Austin bunionectomy and diagnostic test results. Appellant performed both full-duty and limited-duty work during intermittent periods from September 29, 2008 to January 10, 2011 following treatment of her left foot and ankle conditions. Dr. Kuchar advised that the left ankle postoperative site had fully healed without any residual problems. However, appellant continued to experience pain within the tendon. Dr. Kuchar advised that prolonged standing and weight-bearing had invariably led to the aggravation of her symptoms and continued pain which were present even with limited walking and standing no more than eight hours a day. He, therefore, strongly supported appellant's request to be reassigned or considered for a more sedentary position. Dr. Kuchar doubted that she would ever be able to perform her previous assignment which involved 16-hour daily shifts.

In a January 29, 2010 report, Dr. Milagros Lopez, a Board-certified pathologist, advised that a microscopic examination of a specimen of appellant's left ankle osteochondral lesion contained bone fragments. It was benign and negative for acute or chronic inflammation.

In a June 16, 2011 decision, OWCP denied appellant's claim, finding that the medical evidence was insufficient to establish a causal relationship between the diagnosed medical conditions and the established employment factor.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of establishing the essential elements of her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while 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

[4] 5 U.S.C. §§ 8101-8193.

injury.[5] 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.[6]

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. The medical evidence required to establish a causal relationship 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.[7] Neither the fact that appellant's condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish a causal relationship.[8]

ANALYSIS

OWCP accepted that appellant stood on her feet while working as a customs and border patrol officer. The Board finds that the medical evidence of record is insufficient to establish that her left ankle and foot conditions were caused or aggravated by the accepted employment factor.

Dr. Chiakmakis' reports provided physical and x-ray examination findings and diagnoses of recurrent plantar fasciitis, osteochondritis talus of the left foot, tendinitis peroneal brevis tendon of the right and left foot and resolving tendinitis in the left ankle. His prescriptions advised that appellant could perform regular-duty work with restrictions from October 22, 2009 through January 5, 2010. None of these reports or prescriptions contained a medical opinion addressing whether the diagnosed conditions were caused by the accepted employment factor. Medical evidence that does not offer any opinion regarding the cause of an employee's conditions is of limited probative value on the issue of causal relationship.[9] The Board finds,

[5] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *Victor J. Woodhams, id.* at 351-52.

[8] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[9] *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

therefore, that Dr. Chiakmakis' reports and prescriptions are insufficient to establish appellant's claim.

Dr. Kuchar's reports and prescriptions found that appellant had an osteochondral brevis lesion, osteochondritis dessicans and peroneal tendons of the left ankle and peroneal tendinitis, a peroneus brevis tear, plantar fasciitis/fibromatosis and hallux valgus of the left foot. On January 29, 2010 he performed surgery to excise the osteochondral lesion with subchondral drilling on the left ankle. On November 12, 2010 Dr. Kuchar performed a left Austin bunionectomy. He prescribed physical therapy to treat appellant's left foot peroneal tendinitis. Dr. Kuchar authorized her to perform both light-duty and regular-duty work no more eight hours a day during intermittent periods from September 29, 2008 through January 10, 2011. On April 13, 2011 he opined that prolonged standing and weight-bearing led to the aggravation of appellant's symptoms and continued pain despite being restricted to, limited walking and standing no more than eight hours a day. As a result, Dr. Kuchar supported her request to be reassigned to a more sedentary position. He doubted that appellant would ever be able to work in her prior 16-hour a day position. While Dr. Kuchar described his diagnoses and opined that her ongoing symptoms and pain and disability were caused by her employment, the Board finds that he failed to provide a sufficiently rationalized medical opinion explaining how prolonged standing and weight-bearing caused her diagnosed conditions and disability. As noted, part of appellant's burden of proof includes the submission of medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by her.[10] Dr. Kuchar's reports and prescriptions did not explain how the established employment factor caused or aggravated her diagnosed conditions. The Board finds, therefore, that this evidence is insufficient to establish appellant's claim.

The December 15, 2009 report of Dr. Klein was tailored to provide the results of an MRI scan and, as such, did not address the causal relationship between the findings and factors of appellant's federal employment. The Board finds that the report does not establish her claim.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained left ankle and foot injuries causally related to the accepted employment factor. Appellant did not meet her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained left ankle and foot injuries causally related to factors of her federal employment.

[10] *See supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the June 16, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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