

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

M.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Desoto, TX, Employer**

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**Docket No. 11-1793
Issued: February 17, 2012**

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 1, 2011 appellant filed a timely appeal from a May 25, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her occupational disease claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an injury to her feet in the performance of duty.

FACTUAL HISTORY

On February 17, 2011 appellant, then a 54-year-old clerk, filed an occupational disease claim alleging that she developed pain in the bottom of both feet as a result of employment activities for the past 30 years, which required her to walk and stand on concrete. In a

¹ 5 U.S.C. § 8101 *et seq.*

February 12, 2011 statement, she indicated that she had unsuccessfully tried to alleviate the pain herself by wearing different types of shoes.

The record contains an undated position description for a clerk-stenographer and a November 30, 1997 position description for a data collection technologist.

On March 7, 2011 OWCP requested additional evidence, including a comprehensive medical report containing a diagnosis, description of symptoms, the results of examinations and tests and medical rationale explaining how her diagnosed condition was causally related to specific factors of her employment.

On February 25, 2011 Tammie Turner, a health and resource management specialist for the employing establishment, controverted appellant's claim. She stated that appellant's position was sedentary, as indicated in her position description and that the clerk position did not require a lot of walking. Ms. Turner contended that, as appellant had failed to submit any medical evidence, she did not establish a causal relationship between factors of employment and her claimed medical condition.

By decision dated May 25, 2011, OWCP denied appellant's claim. It found that the evidence supported that the incidents occurred as alleged, but denied the claim on the grounds that there was no medical evidence establishing that she sustained a diagnosed condition as a result of established employment activities.²

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit 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.³ Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence.

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 compensable employment factors. The opinion of the physician must be based on a 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

² Subsequent to the May 25, 2011 OWCP decision, additional documents were associated with the file. The Board's jurisdiction is limited to the evidence that was before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

³ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

relationship between the diagnosed condition and the specific employment factors identified by the employee.⁴

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁵

ANALYSIS

OWCP accepted that appellant was a federal employee, that she timely filed her claim for compensation benefits and that the workplace events occurred as alleged. The issue, therefore, is whether she has submitted sufficient medical evidence to establish that the employment activities caused an injury. Appellant submitted no medical evidence in support of her claim prior to the May 25, 2011 decision. Therefore, she failed to establish a *prima facie* claim for compensation.⁶

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between her claimed condition and her employment.⁷ To establish causal relationship, appellant must submit a medical report in which the physician reviews those factors of employment identified by her as causing her condition and, taking into consideration findings upon examination and her medical history, explains how these employment factors caused or aggravated any diagnosed condition.⁸ She failed to submit such evidence and, therefore, failed to satisfy her burden of proof. The Board finds that OWCP properly denied her claim for benefits under FECA.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an injury in the performance of duty.

⁴ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

⁶ See *Donald W. Wenzel*, 56 ECAB 390 (2005).

⁷ *Patricia J. Glenn*, 53 ECAB 159 (2001).

⁸ *Robert Broome*, 55 ECAB 339 (2009).

ORDER

IT IS HEREBY ORDERED THAT the May 25, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 17, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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