

up to six hours a day.² The employing establishment controverted her claim, asserting that she was simply displeased with her work assignment.

OWCP informed appellant in an October 6, 2009 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a medical report from a qualified physician explaining how a diagnosed foot condition resulted from federal employment activity.

In an October 22, 2009 report, Dr. John Tsouris, a podiatrist, examined appellant and observed bilateral cavus foot with residual metatarsus adductus, hammer toe deformities, metatarsal-cuneiform and metatarsal-cuboid joint discomfort and 10-degree ankle dorsiflexion. He also found evidence of right second metatarsal head resection and subluxation of the third, fourth and fifth metatarsal-phalangeal joints. Dr. Tsouris remarked:

“The chronic pain is most probably due to an injury the patient claims to have sustained 15 years prior while a letter carrier. [Appellant] claims to have sustained fractures from which she has never recovered from in totality. This office has no record of this event. [Appellant’s] foot deformities (cavus foot type with residual metatarsus adductus) coupled with obesity lend themselves to poor shock absorption, and subsequent development of osteoarthritis with arthrosis.”

By decision dated December 24, 2009, OWCP denied appellant’s claim, finding the medical evidence insufficient to establish that the accepted job duties aggravated a preexisting foot condition.

Appellant requested reconsideration on August 25, 2010 and submitted new evidence. In a June 1, 2010 report, Dr. Howard D. Zaiff, a podiatrist, related that she experienced a traumatic episode at work on May 4, 1994, resulting in chronic right foot pain rendering her unable to stand for prolonged periods. Radiographic findings exhibited a propulsive right foot with evidence of second metatarsal head resection and second and third metatarsal shaft stress fractures. Dr. Zaiff also noted subluxation and hammertoe deformities of the third, fourth and fifth metatarsal-phalangeal joints, cavus-foot type and midtarsal joint arthritis.

On November 23, 2010 OWCP denied modification of the December 24, 2009 decision.

Counsel requested reconsideration on November 16, 2011 and submitted new evidence. In an October 31, 2011 report, Dr. Zaiff remarked that appellant sustained chronic lesser metatarsalgia of the right foot on the job in May 1994. Following surgery, appellant developed avascular necrosis of the second metatarsal head, which necessitated partial resection. On examination, Dr. Zaiff observed limited range of motion (ROM), decreased epicritic sensation, and motor and sensory deficits. He diagnosed traumatic osteoarthritis/degenerative joint disease of the right second metatarsophalangeal joint, a propulsive gait and lesser metatarsalgia. Dr. Zaiff opined that appellant was permanently disabled.

On March 13, 2012 OWCP denied modification of the November 23, 2010 decision.

² Appellant originally filed a notice of recurrence, which OWCP administratively converted to a new occupational disease claim.

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, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.³ 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.⁴

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁵ To establish fact of injury in an occupational disease claim, an employee must submit: (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.⁶

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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

ANALYSIS

The case record supports that appellant sorted mail, carried heavy bundles and parcels, pushed hampers and skids and routinely stood for up to six hours a day at work. Appellant was also diagnosed with preexisting traumatic osteoarthritis/degenerative joint disease of the right second metatarsophalangeal joint, propulsive gait and lesser metatarsalgia. Nonetheless, the Board finds that she did not establish her occupational disease claim because the medical evidence did not sufficiently demonstrate that these accepted employment activities aggravated her right foot condition.

In an October 22, 2009 report, Dr. Touris examined appellant and commented that her chronic right foot pain was due to a work injury that occurred approximately 15 years earlier. Likewise, Dr. Zaiff stated in June 1, 2010 and October 31, 2011 reports that she experienced a traumatic incident on the job on May 4, 1994. However, neither physician addressed whether

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *See S.P.*, 59 ECAB 184, 188 (2007).

⁶ *See R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁷ *I.J.*, 59 ECAB 408 (2008); *Woodhams*, *supra* note 4.

appellant's job duties, namely sorting and carrying mail, pushing hampers and standing for prolonged periods, aggravated her preexisting right foot condition. A physician's opinion must discuss whether the employment factors described by the claimant were causally related to the diagnosed medical condition.⁸ Because Dr. Touris and Dr. Zaiff failed to do so, their reports were of diminished probative value on the issue of causal relationship. In the absence of rationalized medical opinion evidence, appellant failed to meet her burden of proof.

Counsel contends on appeal that the evidence of record unequivocally established that appellant sustained disabling injuries causally related to her federal employment. The Board has already addressed the deficiencies of the claim.

Appellant may submit new evidence or argument as part of a formal 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 did not establish that she sustained an occupational disease while in the performance of duty.

⁸ *John W. Montoya*, 54 ECAB 306, 309 (2003).

ORDER

IT IS HEREBY ORDERED THAT the March 13, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 8, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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