

ISSUE

The issue is whether appellant established that her left ankle and bilateral foot injuries are causally related to factors of her federal employment.

On appeal, counsel contends that OWCP's decision is contrary to fact and law.

FACTUAL HISTORY

This case has previously been before the Board.³ In an April 19, 2012 decision, the Board affirmed an OWCP decision dated June 16, 2011 denying appellant's occupational disease claim. The Board found that the medical evidence was insufficiently rationalized to establish that she sustained left ankle and foot injuries causally related to an accepted employment factor of standing on her feet while working as a customs and border patrol officer. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.⁴

By letter dated December 12, 2012 appellant, through her attorney, requested reconsideration. She submitted a laboratory report dated May 6, 2011 from LabCorp.

A June 28, 2011 medical report from a physician whose signature is illegible indicated that appellant had rheumatoid arthritis. Appellant could perform full-time light-duty work with restrictions.

In reports dated July 27, 2011 and June 4, 2012, Dr. Ladislav Kuchar, an attending Board-certified podiatrist, noted that since October 13, 2009 appellant had been diagnosed and treated in his office for ankle derangement and bilateral foot peroneus brevis tendinitis. Appellant was last seen on June 23, 2011. Dr. Kuchar noted that appellant had undergone ankle and foot surgeries with no improvement of symptoms caused by her tendinitis. He noted that her job assignment required standing and walking on uneven hard surfaces, such as concrete, 8 to 16 hours a day and up to 10 consecutive days. Dr. Kuchar advised that it was obvious the above-mentioned conditions were aggravated by long periods of walking and standing, especially on rigid surfaces. He noted that appellant was later diagnosed with rheumatoid arthritis. Dr. Kuchar stated that while it was possible that she may have had this condition before she was officially diagnosed with it, joint symptoms, which was what any arthritis primarily affected, were not her complaint. Rather, appellant's chief complaint was always focused on her tendons. Dr. Kuchar stated that rheumatoid arthritis could therefore be safely ruled out as a preexisting condition. He concluded that the true cause of appellant's symptoms was tendinitis.

In a July 21, 2011 report, Dr. Ulker Tok, an internist with a specialty in rheumatology, obtained a history that appellant had rheumatoid arthritis. He noted that the pain in her left ankle and foot had improved, but she was still unable to work on her feet up to 16 hours a day with

³ Docket No. 11-1842 (issued April 19, 2012).

⁴ In the June 16, 2011 decision, OWCP accepted that appellant stood on her feet while working as a customs and border patrol officer.

heavy gear as a customs officer. Dr. Tok listed findings on physical examination and diagnosed rheumatoid arthritis.

In a November 13, 2012 report, Dr. Sanjay J. Chauhan, a Board-certified neurologist, addressed findings that related to a patient who sustained an injury on December 7, 2010.⁵

By decision dated February 1, 2013, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review of the prior decision. It found that Dr. Kuchar's opinions were repetitive of his prior April 14, 2011 opinion and of diminished probative value as they were not rationalized. He failed to explain how appellant's ankle condition was causally related to the established employment factor. Dr. Kuchar did not explain what findings he relied on and how standing and walking caused or aggravated the condition. He did not address whether the condition was temporarily or permanently aggravated.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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 injury.⁷ 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.⁸

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. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medial rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁹ Neither the fact that appellant's

⁵ The record contains evidence pertaining to a claimant not associated with this file.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 8 at 351-52.

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.¹⁰

ANALYSIS

OWCP accepted as factual that appellant stood on her feet while working as a customs and border patrol officer. While the work duties are established, the Board finds that she failed to establish a causal relationship between any left ankle and bilateral foot conditions and the established work factor.

Dr. Kuchar's July 27, 2011 and June 4, 2012 reports found that appellant had ankle derangement and bilateral foot peroneus brevis tendinitis that were aggravated by long periods of walking and standing on rigid surfaces, 8 to 16 hours a day and up to 10 consecutive days as required by her work assignment. He also found that she had rheumatoid arthritis, but stated that tendinitis was the true cause of her symptoms. While Dr. Kuchar opined that appellant's current ankle and bilateral foot conditions were the result of an established work factor, he failed to explain how the employment factor caused or contributed to these conditions. The Board has held that a medical opinion not fortified by medical rationale is of little probative value.¹¹ Without medical reasoning explaining how the established employment factor caused or contributed to appellant's ankle and foot conditions, Dr. Kuchar's July 27, 2011 and June 4, 2012 reports are insufficient to meet appellant's burden of proof.

Dr. Tok's July 21, 2011 report found that appellant had rheumatoid arthritis. He listed findings on physical examination and obtained a history that she worked on her feet up to 16 hours a day with heavy gear as a customs officer. Dr. Tok did not provide a medical opinion addressing whether the established employment factor caused or aggravated appellant's diagnosed condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹² The Board finds, therefore, that Dr. Tok's report is insufficient to establish appellant's claim. Similarly, the May 6, 2011 laboratory report from LabCorp is also insufficient to establish the claim as this report does not specifically address whether the established employment factor caused a diagnosed medical condition.

The June 28, 2011 report from a physician whose signature is illegible has no probative medical value in establishing that appellant sustained left ankle and bilateral foot conditions causally related to the established employment factor as the author cannot be identified as a physician.¹³

¹⁰ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

¹¹ *Caroline Thomas*, 51 ECAB 451 (2000).

¹² See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹³ See *Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

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

On appeal, appellant's attorney contended that OWCP's decision was contrary to fact and law. For reasons stated above, the Board finds that the weight of the medical evidence does not establish that appellant sustained left ankle and bilateral foot conditions causally related to the established employment factor.

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 failed to establish that she sustained left ankle and bilateral foot injuries causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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