



## **ISSUE**

The issue is whether appellant met his burden of proof to establish aggravation of a left foot ulcer causally related to factors of his federal employment.

On appeal counsel argues that the decision is contrary to fact and law.

## **FACTUAL HISTORY**

Appellant, then a 49-year-old consumer safety inspector, filed an occupational disease claim (Form CA-2) alleging that on October 31, 2014 he first realized that his left foot ulcer reopened due to walking at work. He noted that he had a previous claim under OWCP File No. xxxxxx358.<sup>3</sup>

In support of his current claim, appellant submitted factual evidence including a September 18, 2014 limited-duty assignment and a February 13, 2015 statement by Suzanne Nelson, resource manager. Ms. Nelson detailed the amount of walking required with appellant's limited-duty assignment, which included 20 feet to the front door of the office building, 10 feet to the elevator, and approximately 100 feet to his office. She further noted that the restroom was about 40 feet one way from appellant's office and he would have to walk 20 feet to attend a weekly meeting. Ms. Nelson explained that appellant's position was sedentary and required working on a computer, sending e-mails and answering telephones.

In a November 17, 2014 statement, appellant noted that he was on a limited-duty work assignment due to right knee surgery under OWCP File No. xxxxxx917. However, as a result of walking, his foot ulcer reopened. Appellant related that as a result of right knee pain, he placed more weight on his left foot which contributed to the reopening of his left foot ulcer. He indicated that OWCP had previously accepted a left foot ulcer under OWCP File No. xxxxxx358.

Appellant submitted reports from Dr. Phuong Q. Mueller, a treating podiatrist, dated November 3, 2014 and January 12, 2015, and duty status forms (Form CA-17) dated November 3 and December 22, 2014, and January 6, 12, and 20, 2015 which provided work restrictions. Diagnoses on the reports and forms included left foot first metatarsal ulcer. Dr. Mueller reported that appellant attributed the reopening of his left foot ulcer to his compensation for his right knee surgery causing placement of more weight on the left lower extremity.

By letter dated February 4, 2015, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised as to the medical and factual evidence required and afforded appellant 30 days to provide this evidence.

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<sup>3</sup> The record reveals that OWCP accepted a 2013 occupational disease claim for aggravation left foot ulcer under OWCP File No. xxxxxx358. Under this claim appellant was released to regular duty effective August 12, 2014. OWCP accepted occupational disease claims for right knee sprain, medial meniscus and anterior cruciate ligament tears under OWCP File No. xxxxx917 and aggravation of left flat foot, aggravation of Charcot foot/collapsed arches, and arthropathy under OWCP File No. xxxxxx817. These claims were combined under OWCP File No. xxxxxx358, which was assigned as the master file number.

Subsequent to the February 4, 2015 letter, OWCP received a position description and statement from the employing establishment. It also received duty status reports (Form CA-17) and reports from Dr. Mueller as set forth below.

In a July 17, 2013 report, Dr. Mueller diagnosed left foot ulcer, provided dates of treatment, and recommended restrictions regarding walking and standing.

In CA-17 forms dated February 24, March 10, and 24, 2015, Dr. Mueller diagnosed left foot first metatarsal ulcer and provided work restrictions.

Dr. Mueller, in a March 17, 2015 form report, diagnosed a recurring left foot first metatarsal ulcer. He noted that the ulcer reopened while appellant was on an alternate work assignment from September 9 to November 3, 2014. Dr. Mueller attributed appellant's condition to his employment walking and standing on hard surfaces.

In a May 5, 2015 e-mail, the employing establishment reported that appellant had not worked since November 17, 2014. The absence was attributed to his claim in OWCP File No. xxxxxx554.

By decision dated May 13, 2015, OWCP denied appellant's claim. It found the medical evidence insufficient to establish that the alleged aggravation of his left foot ulcer was caused or aggravated by the identified employment factors.

In correspondence dated May 20, 2015, counsel requested a telephonic hearing before an OWCP hearing representative. The hearing was held on January 5, 2016. At the hearing, appellant testified that his limited-duty job assignment was sedentary and did not require standing.

By decision dated February 26, 2016, an OWCP hearing representative affirmed the May 13, 2015 decision denying appellant's occupational disease claim. She found Dr. Mueller's reports failed to provide any explanation as to how appellant's limited walking at work caused or aggravated his left foot ulcer.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish 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 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.<sup>5</sup> 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.<sup>6</sup>

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<sup>4</sup> 5 U.S.C. § 8101 *et seq.*

<sup>5</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>6</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, 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.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> 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.<sup>9</sup> 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 relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>10</sup>

### ANALYSIS

Appellant alleged that he sustained aggravation of his left foot first metatarsal ulcer causally related to his walking while working for the employing establishment. OWCP accepted that he had identified employment factors alleged to have caused or contributed to his claimed condition. The issue is whether appellant has met his burden of proof to establish a diagnosed condition causally related to established employment factors. The Board finds that he failed to establish that the accepted work factors caused or aggravated the medical condition.

The issue of causal relationship is a medical one and must be resolved by probative medical opinion from a physician.<sup>11</sup> OWCP received a March 17, 2015 report from Dr. Mueller which attributed appellant's left foot ulcer condition to his walking and standing on hard surfaces. The Board notes that appellant denied that he did any standing at work during his hearing testimony. In addition, Dr. Mueller did not explain why physiologically walking and standing would cause or aggravate appellant's condition. The Board has found that a mere conclusion without the necessary rationale is insufficient to meet a claimant's burden of proof.<sup>12</sup> Accordingly, Dr. Mueller's report is insufficient to meet appellant's burden of proof.

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<sup>7</sup> *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

<sup>8</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>9</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>10</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>11</sup> *I.A.*, Docket No. 13-1701 (issued January 17, 2014); *Ronald K. Jablanski*, 56 ECAB 616 (2005).

<sup>12</sup> See *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *William C. Thomas*, 45 ECAB 591 (1994) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

Appellant also submitted progress reports and CA-17 forms from Dr. Mueller diagnosing left foot first metatarsal ulcer. Dr. Mueller offered no opinion as to the cause of the left foot ulcer in the CA-17 forms, or the July 17, 2013 and November 3, 2014 reports. The Board has held that medical evidence offering no opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>13</sup>

The Board has held that the fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.<sup>14</sup> An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship.<sup>15</sup> To establish a firm medical diagnosis and causal relationship, appellant must submit a physician's report that addresses how his walking at work caused or aggravated his left foot ulcer.<sup>16</sup>

OWCP advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how appellant's claimed condition was caused or aggravated by his employment, he has not met his burden of proof to establish an occupational disease causally related to factors of employment.

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds the attorney's arguments are not substantiated.

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 meet his burden of proof to establish an aggravation of a left foot ulcer causally related to factors of his federal employment.

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<sup>13</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, *supra* note 8; *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>14</sup> *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007) *Daniel O. Vasquez*, 57 ECAB 559 (2006).

<sup>15</sup> *See D.U.*, *supra* note 7; *D.I.*, *id.*; *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>16</sup> *Michael S. Mina*, *supra* note 9; *Michael E. Smith*, 50 ECAB 313 (1999).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 26, 2016 is affirmed.

Issued: September 15, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board