United States Department of Labor
Employees' Compensation Appeals Board

KELLIE A. SWEET, Appellant	)	
and	)	**Docket No. 06-169**
	)	**Issued: May 17, 2006**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, U.S. PENITENTIARY Leavenworth, KS, Employer	)	

Appearances:
Kellie A. Sweet, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 31, 2005 appellant filed a timely appeal of a December 22, 2004 merit decision of the Office of Workers' Compensation Programs, finding that she did not sustain an injury while in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction of the merits of this case.

ISSUE

The issue is whether appellant has established that she sustained an injury while in the performance of duty.

FACTUAL HISTORY

On September 14, 2004 appellant, then a 33-year-old senior officer specialist (correctional officer), filed a claim for an occupational disease alleging that on September 5, 2002 she first became aware of plantar fasciitis and heel spurs in both feet when these conditions were diagnosed by her treating podiatrist. On September 14, 2004 she first realized that these

conditions were caused by factors of her federal employment. Appellant stated that her feet started to hurt in July 2002 and the pain progressed until she was limping and could hardly walk. She noted that conventional treatment provided little or no results. Her severe pain occurred during and after work. The more she read about the diagnosed conditions, she realized that they were caused by walking and standing on concrete at work. Appellant submitted a history of her employment and employment records. She also submitted a September 16, 2004 letter describing the development of her foot conditions and medical treatment, contending they were caused by factors of her federal employment.

Appellant submitted a description of her correctional officer position. She also submitted medical evidence that included unsigned treatment notes, which indicated that her foot conditions were treated on intermittent dates from January 13 through September 27, 2004. On January 13, 2004 Dr. Harold Cox, a podiatrist, diagnosed plantar fasciitis heel pain and mild bilateral cavus deformity. On April 16, 2004 Dr. Cox diagnosed rebound symptoms of plantar fasciitis on the left more so than on the right.

In an October 3, 2003 medical report, Dr. Gordon R. Kelley, a Board-certified neurologist, noted symptoms related to appellant's feet. He also addressed her medical, family and social background. Dr. Kelley reported findings on physical and neurological examination. He stated that there were no objective findings on examination to clearly indicate that appellant had a neuropathy. Dr. Kelley related that it was "possible" she had a small fiber sensory neuropathy and, if so, then he was concerned about her glucose intolerance or therapy with Lipitor as possible etiologies. He recommended a two-hour glucose tolerance test and an electromyogram (EMG) of appellant's lower extremities. On October 29, 2003 Dr. Kelley performed a nerve conduction study, which revealed no significant abnormalities. He stated that it was "likely" that appellant had a small fiber sensory neuropathy and, if so, there was no large fiber involvement. Dr. Kelley opined that the two likely etiologies of her symptoms were her glucose intolerance and Lipitor treatment. He recommended, among other things, that appellant discontinue taking Lipitor and all statins and that her hyperlipidemia be treated with other measures for the next 6 to 12 months.

A July 20, 2004 report of Dr. James J. Good, a podiatrist, provided a history of appellant's foot problems and medical and family background. He reported his findings on physical and radiographic examination. Dr. Good diagnosed cavus foot with chronic plantar fasciitis and a "possible" underlying neurogenic component to the heel pain.

By letter dated October 18, 2004, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office requested additional factual and medical evidence.

In an October 13, 2004 report, Dr. Cox diagnosed chronic bilateral plantar fasciitis, bilateral pes cavus deformity and small fiber sensory neuropathy.

On October 18, 2004 the employing establishment advised the Office that appellant was working regular duty on October 14, 2004, the day she resigned from her correctional officer position to attend college. No physician had placed her on limited-duty prior to work her resignation. The employing establishment stated that, if there was a medical report placing

appellant on limited-duty work before her resignation, then it would complete a duty status report and make a written limited-duty job offer to her. It noted that appellant received a service-connected award from the Department of Veterans Affairs for an unknown condition. Dr. Cox stated that her symptoms existed while she was in the Army from 1994 to 1996 and that within the last year she reported progression of pain in her heel. Other physicians who had treated appellant noted a family history of foot problems, high arches and diabetes, Dr. Cox's January 2004 recommendation that she try new orthotics instead of surgery. Appellant last worked and walked on concrete floors at the penitentiary on October 14, 2004.

In an October 28, 2004 letter, appellant attributed her plantar fasciitis and heel spurs to working at the employing establishment from January 30, 2000 until her resignation on October 14, 2004. She stated that her resignation was 80 percent due to her foot conditions. Since January 30, 2000, appellant had been on her feet at least 7 hours out of an 8-hour shift, 95 percent of the time. She noted that she occasionally had a job in the tower or hospital duty which involved mostly sitting. Appellant worked on a hard concrete surface daily, made rounds on a constant and random basis, climbed stairs from 1 to 6 levels, stood in one position anywhere from 10 minutes to 1 hour pat searching inmates at the center hall's metal detectors and ran to emergencies at any end of the penitentiary. Appellant was made to wear work boots although she could not wear steel toes with her orthotics, which caused increased pain and blisters. She played tennis 1 to 12 times a year but tried to avoid activities that required her to be on her feet due to pain. Appellant was diagnosed with plantar fasciitis in 2002 and had not undergone any surgery. In September 1995, she was evaluated by the Army and received orthotics for her cavus feet. She provided a history of other injuries she sustained, which included right ankle injuries in May 1999 and May 2001 and foot pain and right and left Achilles tendinitis in July 2002. Appellant described the development of her plantar fasciitis heel spurs and medical treatment.

Appellant submitted an August 22, 2002 progress note of Angie Truong, a physical therapist, which found that she had a supinated foot with increased calcaneal adduction and decreased subtalar eversion secondary from chronic ankle sprain. Ms. Truong noted no significant improvement in her complaints regarding her symptoms. A July 25, 2005 treatment note of Dr. Carol J. Feltheim, a Board-certified family practitioner, which diagnosed foot pain and left Achilles tendinitis. A progress note electronically signed by Sara Kelley, a nurse practitioner and Linda C. Carpenter, a licensed nurse, on June 8, 1999, indicated that appellant experienced right ankle pain, an exacerbation of lower back pain and obesity. A June 9, 1999 x-ray report electronically signed by Linda Gallegos, an x-ray technician, found normal soft tissues, bony structures and joint spaces in appellant's right ankle. In a September 2, 1985 report, Dr. Desresiors, a podiatrist, found that appellant had bilateral pes cavus and that she was casted for orthotics. Unsigned progress notes revealed that appellant's bilateral foot condition was treated on intermittent dates from September 5, 2002 through November 3, 2003. An August 22, 2003 noted found that her bilateral foot condition was likely due to her high arch.

On December 13, 2004 the employing establishment responded, disputing appellant's statement that her October 14, 2004 resignation was at least 80 percent due to her foot conditions. An accompanying letter dated October 3, 2004, advised the employing establishment of her intent to resign from her correctional officer position effective October 14, 2004. The employing establishment stated that this letter did not mention her foot conditions as being any part of her resignation. Appellant was not required to wear work boots, as uniformed staff was

provided with an allowance to purchase shoes, two pairs upon initial employment and one pair every nine months thereafter. The only requirement for uniformed staff shoes was that they had to be safety toed due to working in foot hazard areas.

In a decision dated December 22, 2004, the Office found that appellant did not sustain an injury while in the performance of duty. The Office found the medical evidence of record insufficient to establish that her bilateral foot conditions were causally related to factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained 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.[2] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

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.[4]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton,* 40 ECAB 1143, 1145 (1989).

[3] *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

[4] *Victor J. Woodhams,* 41 ECAB 345, 351-52 (1989).

ANALYSIS

The Board finds that appellant has failed to establish a causal relationship between her bilateral plantar fasciitis and heel spurs and her federal employment. The unsigned treatment notes of Dr. Cox covering intermittent dates from September 5, 2002 through November 3, 2003 and January 13 through September 27, 2004, which addressed appellant's foot problems have no probative value because they are not signed by a physician.[5] As the treatment notes and reports lack proper identification, the Board finds that they do not constitute probative medical evidence sufficient to establish appellant's burden of proof.[6]

The progress note of Ms. Truong, a physical therapist, does not constitute probative medical evidence as a physical therapist is not defined as a "physician" under the Act.[7] Similarly, the progress note of Ms. Kelley, a nurse practitioner and Ms. Carpenter, a nurse and x-ray report of Ms. Gallegos, an x-ray technician, do not constitute probative medical evidence as a nurse[8] and x-ray technician[9] are not considered a physician under the Act.

Dr. Kelley's October 3, 2003 medical report found no objective findings to clearly establish that appellant had any lower extremity neuropathy based on physical and neurological examination. He opined that it was "possible" that she had a small fiber sensory neuropathy and ordered a two-hour glucose tolerance test and an EMG. Dr. Kelley performed a nerve conduction/EMG test on October 29, 2003, which revealed no significant abnormalities. He opined that it was "likely" appellant had a small fiber sensory neuropathy and, if so, there was no large fiber involvement. Dr. Kelley identified the two likely etiologies of her symptoms as her glucose intolerance and Lipitor treatment. He recommended that appellant discontinue taking Lipitor and all statins and that her hyperlipidemia be treated with other measures for the next 6 to 12 months. Dr. Kelley's diagnosis of a small fiber sensory neuropathy, as well, as his opinion regarding the cause of the diagnosed condition is speculative and is therefore of diminished probative value.[10] Further, the Board notes that he attributed the diagnosed condition to appellant's glucose intolerance and Lipitor treatment and not to factors of her federal employment. The Board finds that Dr. Kelley's opinion is insufficient to establish appellant's burden of proof.

Dr. Good diagnosed cavus foot with chronic plantar fasciitis and a "possible" underlying neurogenic component to appellant's heel pain. His diagnosis regarding appellant's heel pain is speculative[11] and he did not address whether any of the diagnosed conditions were caused by

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[5] *Ricky S. Storms*, 52 ECAB 349 (2001).

[6] *Merton J. Sills*, 39 ECAB 572 (1988)

[7] 5 U.S.C. §§ 8101-8193; 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 (2000) (a physical therapist is not a physician under the Act).

[8] *See supra* note 7; *see also Vicky L. Hannis*, 48 ECAB 538, 540 (1997) (a nurse is not a physician under the Act).

[9] *See supra* note 7.

[10] *See Jennifer Beville*, 33 ECAB 1970 (1982); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).

[11] *Id.*

factors of her federal employment. The Board finds that Dr. Good's opinion is of diminished probative value.

In a 1985 report, Dr. Desresiors opined that appellant had bilateral pes cavus. However, this report is of no probative value as it was written some 15 years prior to appellant's federal employment in 2000.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained bilateral plantar fasciitis and heel spurs causally related to factors of her federal employment. The Board finds that she has failed to meet her burden of proof.

CONCLUSION

As appellant did not provide the necessary medical evidence to establish that she sustained an injury while in the performance of duty, the Board finds that she has failed to satisfy her burden of proof in this case.

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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