

hallux rigidus, subungual hematoma, arthritis of the great right toe, avascular necrosis of the first metatarsal, left foot tarsal coalition, and onychomycosis. In her initial report dated July 31, 2006, Dr. Gannon noted that appellant had experienced a painful left toe for several months and that she had related that she had begun a walking program to lose weight, but that her foot pain was terrible. Dr. Gannon's September 20, 2006 progress note indicated that appellant experienced right foot pain similar to her previous left foot pain. Appellant underwent left toe surgery on April 19, 2007 for hallux limitation of the left toe. On July 31, 2007 Dr. Gannon noted that appellant related 100 percent improvement in both her left and right foot symptoms.

On June 23, 2008 Dr. Gannon diagnosed left foot possible posterior tibial tendon dysfunction (PTTD), possible stress fracture, calcaneo-navicular (C-N) coalition, and a swelling limb. Appellant had related to Dr. Gannon that she had visited Atlanta two days prior and had walked a great deal in sandals she had not worn for over a year. On June 30, 2008 Dr. Gannon reported findings on examination and diagnosed calcaneal valgus, pain, posterior tibial tendinitis, and left foot calcaneal navicular coalition. Dr. Gannon completed a certificate for leave pursuant to the Family and Medical Leave Act on June 30, 2007 wherein she noted that "patient has congenital malformation of left foot in the form of a tarsal coalition which has caused a collapse of arch and tendinopathy. This is a progressive deformity requiring treatment and continued therapy."

On July 21, 2008 Dr. Gannon reported findings on examination and diagnosed left foot tarsal coalition, pain and posterior tibial tendinitis. Dr. Gannon noted appellant's concerns regarding her work and that standing at work could cause pain "and aggravate this."

In an August 4, 2008 report Dr. Gannon proffered findings on examination and diagnosed left-foot tarsal coalition and posterior tibial tendinitis. On August 4, 2008 Dr. Gannon also completed a duty status report wherein she placed appellant on restricted work activities, limiting the amount of standing and walking she could perform on a daily basis.

In an August 9, 2008 note Dr. Gannon reported:

"[Appellant] is currently under my care for a congenital malformation of her foot. This deformity has become progressively worse and is aggravated by prolonged standing, walking and weight[-]bearing activities. She has been able to compensate for this deformity for some time but due to the progressive nature of her deformity, she is no longer able to tolerate specific weight[-]bearing activities."

By decision dated September 23, 2008, the Office denied the claim because the evidence of record did not establish that employment factors caused the diagnosed condition.

On October 8, 2008 appellant, through her representative, requested review of the written record.

By decision dated January 15, 2009, following review of the written record, the hearing representative affirmed the denial of the claim because the evidence of record did not establish that employment factors caused the diagnosed condition.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of proof to establish the essential elements of her claim by the weight of the evidence,³ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁴ As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

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.⁷

Under the Federal Employee' Compensation Act, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.⁸ When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.⁹

¹ Following the January 15, 2009 decision the Office received additional medical evidence. As this evidence was not before the Office at the time of its final decision, the Board may not review this new evidence on appeal. 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *G.T.*, *supra* note 4; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁷ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁸ *Raymond W. Behrens*, 50 ECAB 221, 222 (1999); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁹ *Id.*

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

ANALYSIS

On appeal, appellant argues that the Office improperly denied her claim. Appellant's burden is to demonstrate that the identified employment factors caused or aggravated the diagnosed conditions. As noted above, causal relationship is a medical issue that can only be proven by submission of probative rationalized medical opinion evidence. Appellant has not submitted such evidence and therefore has not satisfied her burden of proof and, thus, the Office properly denied the claim.

Appellant has submitted numerous reports from her treating podiatrist, documenting a number of bilateral foot complaints since July 2006. Dr. Gannon's reports however have little probative value on the issue of causal relationship because they lack a rationalized opinion explaining how the identified employment factors caused the conditions diagnosed. Her reports indicate that appellant had a congenital foot condition as well as preexisting bilateral toe conditions. While there is no dispute that appellant is required to stand and walk as part of her employment duties, Dr. Gannon offers no medical rationale to explain how appellant's employment duties contributed to or aggravated appellant's diagnosed conditions. Furthermore, Dr. Gannon does not explain, with any medical reasoning, how any of the conditions diagnosed would cause appellant disability.

Although Dr. Gannon's August 9, 2008 note reported that appellant's left foot condition was "aggravated by prolonged standing, walking and weight-bearing activities," her note is of diminished probative value because it does not contain an accurate and thorough medical history, findings upon examination or a rationalized opinion explaining how the identified employment factors aggravated appellant's left foot condition. As noted above, 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 relationship between the diagnosed condition and the specific employment factors identified by the employee.¹¹ Dr. Gannon's reports and her August 9, 2008 note lack such an opinion and, consequently, are insufficient to satisfy appellant's burden of proof.

¹⁰ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *Id.*

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 his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.¹² Appellant has not submitted sufficient probative rationalized medical opinion evidence and therefore has not satisfied her burden of proof.

The Board finds that appellant has not established that she sustained an injury in the performance of duty causally related to her employment.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty causally related to her employment.

ORDER

IT IS HEREBY ORDERED THAT the January 15, 2009 and September 23, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 22, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹² *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).