U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA PEREZ and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Livermore, CA

Docket No. 99-1696; Submitted on the Record;
Issued October 27, 2000

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an injury to her heels and knees in the performance of duty in January 1998; and (2) whether the refusal of the Office of Workers' Compensation Programs, by its February 5, 1999 decision, to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On May 14, 1998 appellant, then a 33-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that she "continuously walked up and down the stairs at the [employing establishment]. I noticed the pain in … both knees and both feet increased muscle spasm[s], swelling, pain in left and right knee[s]." Appellant also submitted a letter briefly explaining her job duties and noted that "In doing the [job duties] by January 1998 I began to notice continuous pain and pressure in my knees (left/right) and feet (left/right). This happened over my 20 h[ou]rs of work per week." She also submitted a May 20, 1998 disability certificate from Dr. Douglas Abeles, specializing in orthopedic surgery, requesting that appellant be excused from work from "present to May 26, 1998."

On the reverse of appellant's CA-1 form Ms. Diane Caminada, a customer service supervisor at the employing establishment, controverted appellant's claim for continuation of pay. She noted:

> "[We are] challenging/controverting this claim based on performance of duty and fact of injury. [Appellant] only works four hours per day and her duties do not include constant[ly] walking up and down stairs as claimed. Also she claims January [19]98 as a date of injury but no medical treatment has been performed. The first medical s[l]ip only occur[r]ed May 20, 1998. And no diagnosis was given or treatment, no reason why [appellant] is off work. [Appellant] is obese and that could contribute to this alleged condition."

By letter dated June 23, 1998, the Office requested detailed factual and medical information from appellant and the employing establishment. Specifically, a description of the duties appellant alleged caused her injury, all activities performed outside of her federal employment which involved pushing, pulling, bending, stooping or strenuous physical activities, a description of all previous orthopedic injuries and diagnoses and a comprehensive medical report from her attending physician. The Office requested that this information be submitted within 30 days.

On June 25, 1998 the Office received a (Form CA-2) notice of occupational disease and claim for compensation, signed by appellant on May 22, 1998. Appellant indicated that she first became aware of the disease or illness on January 15, 1998 and realized that this illness was caused or aggravated by her employment on February 1, 1998, but did not notify her employing establishment within 30 days because she "thought the pain was temporary or should go away."

In support of her claim, appellant alleged that she changed buildings and "after numerous repetitive movements, e[s]pe[c]ially up and down the stairs, my pain worsened." On the reverse of the CA-2 form Ms. Caminada noted "[appellant] reads odometer readings of the [employing establishment] vehicles, does gas report, fuel usage report, vehicle report and other duties within her limitations. [Appellant] never stated to me or her immediate supervisor, Oscar Moore, of any injury and/or illness until she experienced transportation problems reporting for duty."

On July 1, 1998 in support of its controversion of appellant's claim, the employing establishment submitted a June 3, 1998 letter and other documents noting appellant's notification for absence, her schedule change request submitted on May 18, 1998 and a description of her job duties.

By letter dated July 1, 1998, received by the Office on August 3, 1998, Dr. Abeles indicated that appellant was seen regarding pain to her knees and heels which dated back to a repetitive injury in January 1998 and that she had been complaining of knee and heel pain bilaterally since summer 1997. He noted that appellant was on modified duty related to a prior back injury. Dr. Abeles noted:

> "Physical examination shows a well-developed well-nourished, 33-year-old female in no apparent distress. She ambulates without difficulty. Examination of the knees bilaterally reveals no significant effusion and no significant tenderness with palpation. There is otherwise full range of motion and no evidence of any instability. There is negative Lachman, negative drawer, and negative McMurray sign. She has full range of motion of her heels. Neurovascular status is intact in both lower extremities. There is no significant tenderness with palpation, although there is a feeling of mild discomfort with pressure points on her heel and the middle aspect of her calcaneus."

He gave his diagnosis of appellant's condition as "plantar fasciitis" of the knees without any significant pathology at the present time. Dr. Abeles stated that "without evidence to the contrary, [appellant] was injured while performing her usual and customary duties at work." He recommended that appellant use a knee brace and a plantar fascia heel cup.

By follow-up report dated September 16, 1998, received by the Office on September 22, 1998, Dr. Abeles indicated that appellant noted she was doing better using the brace and heel cup. He stated that appellant's follow-up neurological examination was intact and suggested that appellant should continue working full duty with no restrictions regarding her knee and heel injury.

By decision dated December 18, 1998, the Office rejected appellant's claim finding that she failed to establish that she sustained an injury in the performance of duty as alleged. The Office stated that "[p]lantar fasciitis of the knees is not an acceptable diagnosis. In addition, [Dr. Abeles] indicates there is no significant pathology related to [appellant's] employment."

In a January 25, 1999 letter, received by the Office on January 29, 1999, appellant requested reconsideration. No new or additional evidence was submitted in support of this request.

By decision dated February 5, 1999, the Office denied appellant's request for reconsideration on the grounds that she did not identify the grounds upon which she requested her case to be reopened and neither raised substantial legal questions nor included new and relevant evidence to warrant review of the Office's prior decision.

The Board finds that the Office properly determined that appellant failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty on January 1, 1998, as alleged.[1]

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 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.[3] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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

[1] The Board notes that, subsequent to the Office's February 5, 1999 decision, Dr. Abeles submitted a March 8, 1999 report; however, the Board cannot review evidence for the first time on appeal not previously before the Office at the time it rendered its decision.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Daniel R. Hickman*, 34 ECAB 1220 (1983).

[4] *See Delores C. Ellyett*, 44 ECAB 992, 994 (1990).

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 opinion is 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.[5]

The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by employment conditions is sufficient to establish causal relation.[6]

In the instant case, appellant has alleged that she sustained a traumatic injury and an occupational bilateral knee and heel condition causally related to her federal employment. Appellant submitted reports dated July 1 and September 16, 1998 from Dr. Abeles who diagnosed plantar fasciitis of the knees without any significant pathology and on follow-up examination he reported a full range of motion of ankles and knees with minimal pain in the knees and no significant swelling. As Dr. Abeles' July 1, 1998 report suggested that without evidence to the contrary, appellant was injured while performing her usual and customary duties at work, he submitted no medical rationale to explain how specific employment factors caused or contributed to the alleged condition. He also stated that appellant has no specific limitations regarding her knee and heel injury and can continue working full duty without restrictions relating to this injury. The Board has held that a physician's opinion is not dispositive simply because it is offered by a physician.[7] To be of probative value to appellant's claim, the physician must provide a proper factual background and must provide medical rationale which explains the medical issue at hand, be that whether the current condition is disabling or whether the current condition is causally related to the accepted employment injury. Where no such rationale is present, the medical opinion is of diminished probative value.

Appellant did not submit medical evidence to establish that her bilateral knee and heel condition was sustained in the performance of duty causally related to factors of her federal employment-related duties. None of the reports provide a probative, rationalized medical opinion sufficient to establish that appellant sustained a disability causally related to employment factors.

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

[6] *Alberta S. Williamson*, 47 ECAB 569 (1996).

[7] *See Michael Stockert*, 39 ECAB 1186 (1988).

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

Under section 8128(a) of the Act,[8] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[9] which provides that a claimant may obtain review of the merits of the claim by:

> "(i) Showing that the Office erroneously applied or interpreted a specific point of law, or
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> "(ii) Advancing a relevant legal argument not previously considered by the Office, or
>
> "(iii) Constituting relevant and pertinent new evidence not previously considered by the Office."

Section 10.608(b) provides that any application for review of the merits of the claim which fails to meet at least one of the standards described in section 10.606(b)(2) will be denied by the Office without reopening the case for a review of the merits.[10]

In support of her reconsideration request, appellant did not submit any new or additional evidence. Therefore, the Office properly denied appellant's request for a review on the merits.

[8] 5 U.S.C. § 8128(a).

[9] 20 C.F.R. § 8128(a).

[10] 20 C.F.R. § 10.608(b).

The decisions of the Office of Workers' Compensation Programs dated February 5, 1999 and December 18, 1998 are hereby affirmed.

Dated, Washington, DC
October 27, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member