U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TRACY A. FULLEN and U.S. POSTAL SERVICE,
POST OFFICE, Shreveport, LA

Docket No. 01-1113; Submitted on the Record;
Issued December 19, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs acted within its discretion in denying appellant's December 16, 2000 request for reconsideration.

On May 22, 1996 appellant, then a 31-year-old city carrier, injured his right foot when he stepped on a piece of glass while delivering mail. He stopped work and obtained medical attention. The Office accepted his claim for laceration of the right foot and paid benefits.

Appellant promptly accepted a limited-duty job answering telephones and doing miscellaneous office work. Following physical therapy, he was released to full duty on August 19, 1996.

On September 21, 1996, however, Dr. James S. Lillich, an orthopedic foot specialist, reported that appellant had continuing problems with pain and numbness along the medial and dorsal aspect of the forefoot area. Appellant complained of a stabbing pain within the foot when walking even for a short time. Dr. Lillich diagnosed status post puncture wound of the foot with possible foreign body and plantar nerve transection.

On October 10, 1996 Dr. Lillich reported that a magnetic resonance imaging scan revealed no evidence of foreign matter within the midfoot area but possibly some glass within the medial aspect of the foot. He stated: "I do not recommend surgical treatment for this at this time, but will try to continue with conservative treatment with conservative shoewear." Dr. Lillich prescribed medication and restricted appellant's work.

On November 22, 1996 Dr. Lillich reported that appellant was essentially unchanged. He advised appellant that there was not much more he could do on a conservative basis to relieve him of his pain. Dr. Lillich felt that it was best to continue with observation. In a December 6, 1996 addendum, he released appellant to his normal duties.

Over the next few months appellant worked regular duty on and off. Eventually, on April 4, 1997, Dr. Lillich reported that appellant had a permanent work restriction limiting walking on uneven surfaces for no more than two hours a day.

On April 22, 1998 appellant filed a claim asserting that he sustained a recurrence of disability as a result of his original injury. He indicated that he did not stop work, however, but rather had to change crafts in September 1997, becoming a mailhandler, because of his permanent work restriction.

In a decision dated July 21, 1998, the Office denied appellant's claim of recurrence on the grounds that there was no evidence to suggest that appellant's current condition resulted from his May 22, 1996 injury.

Appellant requested review by an Office hearing representative. In a July 1998 statement, appellant clarified what he was seeking: "As per my statement and my doctors' my injury has disqualified me from the letter carrier craft. Being determined permanent, I am seeking a[n] impairment disability rating and a scheduled award from my traumatic injury on May 22, 1996. There is no reoccurrence." On October 18, 1998 appellant's representative advised the Office hearing representative as follows: "Action was initiated to seek a[n] impairment disability rating and a scheduled award for the May 22, 1996 accident. Your assistance is definitely needed to put this matter back on the right track."

On March 14, 1999 Dr. Lillich reported as follows:

> "[Appellant] was last seen in this clinic on January 26, 1999. He has been treated on an intermittent basis for recurrent problems regarding pain and swelling in his right foot related to previous puncture wound. He has some fibrosis present with the midportion of the arch and also signs and symptoms of recurrent inflammation within the mid tarsal joints. This is currently being treated conservatively.
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> "Regarding his impairment with the lower extremity, the A[merican] M[edical] A[ssociation], *Guide [to the Evaluation of Permanent Impairment,]* fourth edition shows no specific impairment ratings regarding this type of problem since it is relatively intermittent in nature. This is based on the lack of any degenerative changes involving the midfoot joint, specific nerve damage o[r] lack of range of motion."

On March 14, 1999 appellant filed an occupational disease claim asserting that the severe pain and swelling in his right foot and leg were related to his duties as a mailhandler and continued walking and standing.

Following a June 21, 1999 hearing, appellant submitted evidence to support that his duties as a mailhandler aggravated his accepted foot injury.

On March 25, 1999 Dr. Lillich reported that appellant was still having pain in the midfoot area mostly along the medial side with recurrent swelling and pain with attempts at any prolonged standing or walking, climbing or squatting. Dr. Lillich noted that the A.M.A., *Guides*

did not have a specific impairment rating for the type of persistent problem appellant had with his foot. He stated:

> "However, he does have a disability of his foot related to the recurrent episode of synovitis and areas of permanent pain related to the previous injury. These have resulted in him being unable to stand and walk for prolonged periods of time and also he will have continued difficulty with climbing and squatting. As was discussed before, these are permanent restrictions for this patient because of the previous injury."

In a decision dated December 16, 1999, the hearing representative found that the medical evidence failed to support that appellant's disability on or after April 22, 1998 was causally related to the accepted employment injury of May 22, 1996. The hearing representative also denied appellant's claim for an occupational disease, finding that the medical evidence failed to support that appellant developed a medical condition causally related to his duties as a mailhandler on or after September 1997.[1]

On December 16, 2000 appellant requested reconsideration. He submitted copies of documents that were previously of record. He argued that the hearing representative had failed to decide appellant's March 14, 1999 occupational disease claim, and he repeated previous arguments concerning the sufficiency of the medical evidence.

In a decision dated February 16, 2001, the Office denied appellant's request for reconsideration. The Office, stating that it had conducted only a limited review of the file, found that appellant has submitted no new evidence with his request. The Office also found that appellant's arguments concerning the medical evidence were repetitive of arguments advanced prior to the hearing representative's decision. The Office further found that appellant's argument that the hearing representative failed to decide his March 14, 1999 occupational disease claim was without merit.[2]

An appeal to the Board must be mailed no later than one year from the date of the Office's final decision.[3] Because appellant mailed his March 6, 2001 appeal more than one year after the hearing representative's December 16, 1999 decision, the Board has no jurisdiction to review that decision. The only decision that the Board may review is the Office's February 16, 2001 decision denying appellant's December 16, 2000 request for reconsideration. Therefore, the only issue before the Board is whether the Office abused its discretion in denying that request.

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[1] The hearing representative took original jurisdiction of the matter, as the district Office had issued no initial decision on appellant's March 14, 1999 claim that his duties as a mailhandler had caused an occupational disease or illness.

[2] Although the Office denied appellant's request for reconsideration "because the evidence you submitted is insufficient to warrant modification of the prior decision," the Office conducted no review of the merits of his claims. The Office instead denied a merit review because he failed to submit new and relevant evidence or argument.

[3] 20 C.F.R. § 501.3(d) (time for filing); *see* 20 C.F.R. § 501.10(d)(2) (computation of time).

The Board finds that the Office acted within its discretion in denying appellant's December 16, 2000 request for reconsideration.

Section 10.606(b) of the Code of Federal Regulations[4] provides that an application for reconsideration, including all supporting documents, must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office. The request may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If the Office grants reconsideration, the case is reopened and reviewed on its merits. Where the request fails to meet at least one of the standards described, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[5]

Appellant's December 16, 2000 request for reconsideration fails to meet at least one of the standards for review. The evidence he submitted to support his request was duplicative of evidence previously before the Office and his arguments concerning the sufficiency of the medical evidence were repetitive. Evidence that repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case.[6] Further, appellant's argument concerning his occupational disease claim is not a relevant legal argument on its face, as the hearing representative indeed denied that claim.[7]

The Board will affirm the Office's February 16, 2001 decision denying appellant's request for reconsideration. On return of the record, however, the Office should consider the following: Appellant has made clear that he is claiming a schedule award for permanent impairment caused by his May 22, 1996 employment injury. His physician, Dr. Lillich, has submitted medical reports on this very point. The Office should further develop appellant's claim as appropriate and issue a final decision on his entitlement to a schedule award.

[4] *Id*. at § 10.606(b).

[5] *Id*. at § 10.608.

[6] *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

[7] Although the reopening of a case for merit review may be predicated solely on a legal premise, such reopening is not required where the contention does not have a reasonable color of validity. *See generally Daniel O'Toole*, 1 ECAB 107 (1948) (that which is offered as an application should contain at least the assertion of an adequate legal premise, or the proffer of proof, or the attachment of a report or other form of written evidence, material to the kind of decision which the applicant expects to receive as the result of his application; if the proposition advanced should be one of law, it should have some reasonable color of validity to establish an application as *prima facie* sufficient).

The February 16, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
December 19, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member