

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY S. BIRAC and U.S. POSTAL SERVICE,
POST OFFICE, Billings, MT

*Docket No. 02-2211; Submitted on the Record;
Issued December 17, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant met her burden of proof to establish that she sustained her diagnosed right foot conditions in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

Appellant, a 41-year-old distribution clerk, filed a Form CA-2 claim for benefits based on occupational disease on November 11, 2000, alleging that she had sustained several conditions in her right foot which were causally related to factors of her employment.

By decision dated March 1, 2001, the Office denied appellant's claim on the grounds that her diagnosed right foot conditions were not causally related to factors or incidents of employment.

By letter dated October 16, 2001, appellant requested reconsideration. Appellant submitted reports and treatment notes from Dr. Scott DeMars, a podiatrist, dated May 17 through October 12, 2001; an operative report dated May 31, 2000 and reports and treatment notes during the year 2000 from Dr. Thomas R. Johnson, a Board-certified orthopedic surgeon; reports and treatment notes during 2000 from Dr. Tom Countway, a podiatrist; and treatment notes during 2000 from Dr. Gregory S. McDowell, a Board-certified orthopedic surgeon. These reports stated findings on examination and related appellant's complaints of pain. In his May 17, 2001 report, Dr. DeMars diagnosed hallux valgus with bunions on the right foot, hammertoe on the second and fifth digits of her right foot and Morton's neuroma on her right foot. None of these reports, however, contained a probative, rationalized medical opinion indicating and explaining how appellant's claimed right foot condition was causally related to factors of employment.

By decision dated January 2, 2002, the Office denied reconsideration.

By letter dated March 26, 2002, appellant requested reconsideration. Appellant submitted reports dated March 4 and July 25, 2002 from Dr. DeMars; reports dated

November 19 and December 3, 2001 from Dr. John R. Dorr, an orthopedist. Dr. DeMars reiterated his previous diagnoses of hallux valgus with bunions, right foot; hammertoe on the second digit of her right foot and Morton's neuroma on the third interspace of her right foot. He also diagnosed Achilles equinus, right foot.

By decision dated June 5, 2002, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board finds that appellant did not meet her burden of proof to establish that she sustained her diagnosed right foot conditions in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that 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.² These are the essential elements of each and every 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 causal relationship is usually rationalized medical 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

In the present case, appellant failed to submit medical evidence demonstrating a causal relationship between her claimed foot conditions and factors of her employment. The medical

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

evidence consists of reports from Drs. DeMars, Johnson, Countway and McDowell, none of which provided a probative, rationalized medical opinion indicating that factors of appellant's employment resulted in her diagnosed foot conditions. Dr. DeMars stated findings on examination, diagnosed the conditions of hallux valgus with bunions, hammertoe, Morton's neuroma and Achilles equinus, but did not provide medical evidence or explain the process through which factor of appellant's employment could have caused these conditions. Appellant, therefore, has failed to submit any rationalized, probative medical evidence establishing that her diagnosed foot conditions are causally related to employment factors or conditions.

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 her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁵ Causal relationship must be established by rationalized medical opinion evidence. The Office advised appellant of the type of evidence required to establish her claim; however, appellant failed to submit such evidence. Appellant, therefore, did not provide a medical opinion to sufficiently describe or explain the medical process through which factors of her employment would have been competent to cause her claimed condition.

Accordingly, as appellant failed to submit any probative medical evidence establishing that her diagnosed right foot conditions were causally related to her employment, the Office properly denied appellant's claim for compensation. Thus, the Office's January 2, 2002 decision denying reconsideration of the March 1, 2001 decision is affirmed.

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

Under 20 C.F.R. § 10.607, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.⁶ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁷

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office. The reports from Dr. DeMars and Dr. Dorr did not contain a probative, rationalized medical opinion regarding whether appellant's claimed conditions were caused by factors of her employment injury. Dr. DeMars' reports are cumulative and repetitive of previous reports which were already considered by the Office. Therefore, the medical evidence submitted by appellant on reconsideration are not relevant and pertinent. Additionally,

⁵ *See Id.*

⁶ 20 C.F.R. § 10.607(b)(1). *See generally* 5 U.S.C. § 8128(a).

⁷ *Howard A. Williams*, 45 ECAB 853 (1994).

appellant's March 26, 2002 letter failed to show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits. The Board therefore affirms the Office's June 5, 2002 decision.

The decisions of the Office of Workers' Compensation Programs dated June 5, 2002 and January 2, 2002 are hereby affirmed.

Dated, Washington, DC
December 17, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member