U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of APRIAL C. BYES-EVANS and U.S. POSTAL SERVICE, NORTH END STATION, Detroit, MI

Docket No. 02-414; Submitted on the Record;
Issued July 18, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS, MICHAEL E. GROOM

The issues are: (1) whether appellant sustained a frostbite injury as a result of the duties she performed on January 18, 1994; (2) whether she sustained a recurrence of disability on or about July 7, 1999 causally related to the January 18, 1994 frostbite injury; and (3) whether the Office of Workers' Compensation Programs properly denied appellant's June 13, 2001 request for reconsideration.

On January 20, 1994 appellant, then a 22-year-old mail carrier, filed a claim asserting that the possible frostbite of her toes was a result of carrying mail on January 18, 1994. She lost no time from work; she was not charged leave or continuation of pay. Appellant's supervisor indicated that medical expenses were incurred or expected.

Appellant was seen on January 20, 1994 for "pain -- feet secondary to cold exposure." She was restricted to limited duty indoors. Appellant received two subsequent disability slips and returned to work on February 7, 1994 without limitation. There is no evidence that she received further medical attention after February 3, 1994.

The Office closed appellant's claim on February 9, 1994. Certain cases that are very simple or do not involve large expenses are closed in "short form," without formal adjudication by the Office claims staff.[1] Because there was no formal adjudication of the claim, no accepted condition appears on the Form CA-800, Federal Employees' Compensation Act nonfatal summary.

On January 27, 2000 appellant filed a claim asserting that she sustained a recurrence of disability on July 7, 1999 as a result of her January 18, 1994 employment injury. She explained

[1] Federal (FECA) Procedure Manual, Part 1 -- Mail and Files, *Creation of Cases*, Chapter 1.400.4 (Short Form Closures) (February 2000).

that after a full day of work on June 19, 1999 she was unable to walk without pain until June 21, 1999. Both feet were swollen and felt numb across the top.

To support her claim appellant submitted medical records showing that she was diagnosed in June 1999 with bilateral tarsal tunnel syndrome secondary to flat feet. She also submitted, however, an August 13, 1999 report by Dr. B.K. Ahmad, a consulting neurologist, who related the following history:

> "[Appellant] developed frostbite with subsequent pain and paresthesias in the feet about four years ago. This happened while she was working. After several weeks of these symptoms, [appellant] improved significantly. She was well until about six months ago when she started complaining of recurrence of numbness over her toes, especially over the dorsal aspect. These symptoms have improved significantly over the past two months, in that her feet feel tight and appear swollen, although they are actually not."

Dr. Ahmad assessed what appeared to be a small fiber distal sensory peripheral polyneuropathy in a stocking glove pattern. He ordered a complete work-up and ordered further tests.

On December 13, 1999 Dr. Ahmad reported that appellant carried a diagnosis of sensory peripheral polyneuropathy due to frostbite and that her symptoms were particularly exacerbated by exposure to cold. He recommended that appellant's work environment not include exposure to the elements and that she be given an indoor job.

On March 30, 2000 the Office advised appellant: "As your original claim was accepted as a quick-close, first aid injury and a formal diagnosis of frostbite was never offered, we will need medical evidence from that date in order to determine whether this condition actually existed. This is necessary since your physician states that the cause of your currently diagnosed condition, sensory peripheral polyneuropathy, is frostbite experienced on January 18, 1994." The Office requested that appellant submit records of all medical treatment received for her foot condition since January 18, 1994. The Office also requested that appellant submit a narrative report from her physician containing an opinion explaining the causal relationship between her current condition and the original injury.

Appellant advised that she had no trouble with her feet since 1994 aside from some aching and burning, for which she sought no medical attention. She submitted additional medical evidence to support her claim.

Appellant's family practitioner, Dr. Charles H. Edmonds, reported on March 16, 2000 that appellant was followed up for the past six months status post a frostbite injury in 1994:

> "[Appellant] works as a mail carrier at the [employing establishment] in Detroit. She apparently was exposed to the elements for an extended period in 1994. [Appellant] developed some numbness in June 1999. She was seen by neurology and diagnosed with sensory peripheral polyneuropathy, most likely secondary to a frostbite injury and she was taken off the outdoor routing and placed on indoor work only on June 21, 1999."

Dr. Edmonds related his findings on physical examination and diagnosed sensory peripheral polyneuropathy, secondary to frostbite injury in 1994.

In a decision dated May 22, 2000, the Office found that the evidence was insufficient to support either a frostbite injury on January 18, 1994 or the claimed recurrence of June 19, 1999. The Office noted that none of the medical evidence received in support of the claim was dated earlier than June 22, 1999 and none established the occurrence of a frostbite injury on January 18, 1994. As such, an accepted recurrence of that injury was not possible.

In a decision dated January 30, 2001, an Office hearing representative affirmed the denial of appellant's claim of recurrence. The hearing representative noted that the file contained no contemporaneous medical evidence establishing that appellant sustained a frostbite injury on January 18, 1994. Further, there was no medical evidence establishing that appellant's complaints more than five years after the claimed injury had any relation to that injury. There was no bridging evidence of any kind to indicate a continuing relationship to the 1994 incident. The hearing representative found that the medical evidence also failed to establish that the claimed recurrence of disability was causally related to the work factors of January 18, 1994.

On June 13, 2001 appellant requested reconsideration and submitted in support thereof a January 16, 2001 report from Dr. Naganand Sripathi, a neurologist, who related appellant's complaints of twitching in her hands and around her eyes. She still complained of numbness of the fingertips as well as the feet. In relating appellant's history, Dr. Sripathi noted that appellant started her career as a mail person in 1994 and that she used to deliver for six to seven hours: "During her initial days she was exposed to cold and the next day her feet got numb. [Appellant] was diagnosed with frostbite." Dr. Sripathi described findings on examination and diagnosed "sensory mononeuropathies of the feet as the result of her frostbite versus small fiber neuropathy, probable carpal tunnel syndrome and muscle twitching.

In a decision dated August 14, 2001, the Office denied appellant's request for reconsideration. The Office found that the medical evidence submitted in support of her request was repetitive and cumulative, essentially the same documentation that was previously submitted and considered.

The Board finds that the evidence fails to establish that appellant sustained a frostbite injury as a result of the duties she performed on January 18, 1994.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of her claim.[3] When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Margaret A. Donnelley*, 15 ECAB 40 (1963).

and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.[4]

The Office does not dispute the duties appellant performed as a mail carrier in Detroit, Michigan, on January 18, 1994, nor does the Office dispute her exposure to cold weather, though details of her exposure that day are lacking. The Office denied appellant's claim because the medical evidence failed to establish that her work factors or exposure on January 18, 1994 caused a frostbite injury.

Causal relationship is a medical issue[5] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[6] must be one of reasonable medical certainty,[7] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[8]

Appellant submitted no such medical evidence. The medical record from 1994 consists of one treatment record and two disability slips. These reports show that appellant was seen on January 20, 1994 for "pain -- feet secondary to cold exposure." This is a complaint, not a diagnosis of a medical condition. These records offer no history, no findings on physical examination and no diagnosis of frostbite, superficial or otherwise. The only reference to frostbite appears on appellant's January 20, 1994 claim form, where she described the nature of her injury as "possible frost-bitten toes." Five and a half years later she told her physicians, minus the "possible," that she had a frostbite injury in 1994. Her physicians have since reported this history as fact. On January 16, 2001 Dr. Sripathi reported that appellant was diagnosed with frostbite in 1994. There is simply no evidence for this in the record and nothing to show that appellant's "frostbite" in 1994 was anything other than self-diagnosed.

The contemporaneous medical records do not make the diagnosis and no physician has explained how a firm diagnosis of frostbite is supported by the medical records that exist from that time. No physician has offered sound medical reasoning to explain the nature of the relationship between such a diagnosis and the duties appellant performed on January 18, 1994. Without such reasoned medical opinion evidence, appellant has not met her burden of proof.

Because the medical opinion evidence fails to establish that appellant sustained a frostbite injury on January 18, 1994, appellant is not able to establish that such an injury caused a

[4] *See generally John J. Carlone*, 41 ECAB 354 (1989).

[5] *Mary J. Briggs*, 37 ECAB 578 (1986).

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[7] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[8] *See William E. Enright*, 31 ECAB 426, 430 (1980).

recurrence of disability in 1999. Even if a frostbite injury in 1994 were established, no physician has explained how appellant's complaints in 1999 have any relation to the injury, as opposed to a more recent exposure or how appellant's recurrence in 1999 is consistent with the absence of significant foot trouble since early 1994.[9]

The Board also finds that the Office acted within its discretion in denying appellant's June 13, 2001 request for reconsideration.

The Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the "application for reconsideration.''[10]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must 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.[11]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[12]

Appellant's February 2, 2001 request for reconsideration does not show that the Office erroneously applied or interpreted a specific point of law, nor does it advance a relevant legal argument not previously considered by the Office. She supported her request by submitting additional medical evidence, but Dr. Sripathi's January 16, 2001 report is merely repetitive of evidence previously submitted and considered by the Office. The report makes no attempt to substantiate that appellant suffered a frostbite injury on January 18, 1994 and that this injury caused a recurrence of disability in 1999.

[9] As the Office noted in its May 22, 2000 decision, a review of the evidence suggests that appellant might have incurred a new injury in 1999 and might consider filing an appropriate claim for that injury.

[10] 20 C.F.R. § 10.605 (1999).

[11] *Id*. § 10.606.

[12] *Id*. § 10.608.

Evidence that repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case.[13] Evidence that does not address the particular issue involved also constitutes no basis for reopening a case.[14]

Because appellant's February 2, 2001 request for reconsideration fails to meet one of the three standards for obtaining a merit review of her case, the Board finds that the Office acted within its discretion in denying her request without reopening her case for a merit review.

The August 14 and January 30, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
July 18, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

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

[14] *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).