

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LUNA C. HAMILTON and U.S. POSTAL SERVICE,  
POST OFFICE, Nashville, TN

*Docket No. 02-1244; Submitted on the Record;  
Issued October 7, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of disability due to her accepted employment injury on January 30 through February 7, 2001; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128.

On November 13, 1997 appellant, then a 47-year-old supervisor, filed an occupational disease claim (Form CA-2) alleging that on September 14, 1995 she first realized her feet problems were aggravated by the amount of walking she was required to do as part of her employment duties. The Office accepted the claim for aggravation of right hallux valgus and left claw toe.

On January 25, 2000 the Office issued appellant a schedule award for a four percent impairment of the right foot and a four percent impairment of the left foot.

On December 29, 2000 appellant accepted a limited-duty job offer and returned to work on January 2, 2001.

In a February 5, 2001 report, Dr. David J. Sables, a podiatrist, noted that appellant had been under his care for the period January 29 through February 6, 2001.

On February 13, 2001 appellant filed a claim for compensation (Form CA-7) requesting compensation for the period January 30 through February 7, 2001.

By letter dated March 8, 2001, the Office informed appellant that the evidence was insufficient to support her recurrence claim and advised her as to the type of medical evidence required to support her claim.

By decision dated April 9, 2001, the Office denied appellant's claim for a recurrence of disability on January 30, 2001 due to her accepted employment injury. The Office found the

medical evidence failed to show that her current condition was causally related to her accepted employment injury.

By letter dated April 16, 2001, appellant requested reconsideration and submitted an April 4, 2001 work restriction form by Dr. Sable, who noted that appellant was unable to stand or walk on her feet due to a cortisone shot.

On July 2, 2001 the Office denied appellant's request for merit review.

The Board finds that appellant did not sustain a recurrence of disability due to her accepted employment injury on January 30 through February 7, 2001.

When an employee, who is disabled from the job held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>1</sup> If the claim for recurrence of disability is based on a worsening of the accepted condition, the claimant must submit rationalized medical evidence substantiating this deterioration and explaining how and why the condition continues to be related to the accepted injuries or other factors of federal employment.<sup>2</sup> Appellant has not alleged that there was a change in the nature of her light-duty requirements such that she was unable to perform her position.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his accepted employment injury.<sup>3</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>4</sup>

In order to support the claim for a recurrence of disability, medical evidence is needed to establish a clear connection between the accepted work-related condition of September 14, 1995 and the disability commencing January 30, 2001. The record contains no such medical opinion. Indeed, appellant has failed to submit any medical opinion that relates her disability commencing January 30, 2001 to her September 14, 1995 employment injury. For this reason, she has not discharged her burden of proof to establish the claim that she sustained a recurrence of disability as a result of her accepted employment injury.

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<sup>1</sup> *Laurie S. Swanson*, 53 ECAB \_\_\_\_ (Docket Nos. 01-1406 & 02-765, issued May 2, 2002).

<sup>2</sup> *Carl C. Graci*, 50 ECAB 557 (1999).

<sup>3</sup> *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139, 142 (1993); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>4</sup> *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

The only evidence submitted by appellant was a February 5, 2001 note by Dr. Sables, stating that appellant had been under his care for the period January 29 through February 6, 2001. This medical evidence failed to establish a recurrence. Dr. Sable does opine that appellant was totally disabled for the period she claimed compensation for a recurrence of disability as he merely noted that she had been under his care. Furthermore, she provides no opinion relating her alleged disability to her accepted employment injury.

As appellant submitted insufficient evidence substantiating either a change in the nature and extent of her light-duty position for the period January 30 through February 7, 2001 or an objective worsening of the accepted conditions on and after that date, she has not met her burden of proof in establishing the claimed recurrence of disability commencing on that date.

The Board finds that the Office properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128.

Section 8128(a) of the Federal Employees' Compensation Act<sup>5</sup> does not give a claimant the right upon request or impose a requirement upon the Office to review a final decision of the Office awarding or denying compensation. Section 8128(a) of the Act, which pertains to review, vests the Office with the discretionary authority to determine whether it will review a claim following issuance of a final Office decision. The Office through regulations, has placed limitations on the exercise of that discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>6</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.<sup>7</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>8</sup> When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.<sup>9</sup>

The relevant issue in this case was medical in nature. Appellant's claim was denied because of insufficient rationalized medical evidence to establish a causal relationship between her January 30, 2001 recurrence and her accepted aggravation of right hallux valgus and left claw toe. In support of her request for reconsideration, appellant submitted an April 4, 2001 work restriction from by Dr. Sable. The factual evidence submitted is irrelevant to the medical issue and insufficient to warrant merit review.

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<sup>5</sup> 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> 20 C.F.R. § 10.606.

<sup>8</sup> 20 C.F.R. § 10.607.

<sup>9</sup> 20 C.F.R. § 10.608.

In this case, appellant's April 16, 2001 request for reconsideration did not meet any of the above requirements for reopening a claim for merit review. The evidence submitted was not relevant to the present issue,<sup>10</sup> nor did appellant submit a relevant legal argument or show that the Office erroneously applied or interpreted a specific point of law. Accordingly, the Board finds that the Office properly denied appellant's request for reconsideration without merit review.

The decisions of the Office of Workers' Compensation Programs dated July 2 and April 9, 2001 are hereby affirmed.

Dated, Washington, DC  
October 7, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>10</sup> Appellant submitted a work restriction form dated April 4, 2001 by Dr. Sable which detailed her work restrictions and that she had been given a cortisone shot which resulted in appellant's being unable to walk or stand. The work restriction form is irrelevant as it does not relate to the issue at hand, whether appellant sustained a recurrence of disability for the period January 30 through February 7, 2001.