

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**DAVID T. HOOD, Appellant**

**and**

**DEPARTMENT OF THE ARMY, CORPS OF  
ENGINEERS, Pomeroy, WA, Employer**

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**Docket No. 05-1683  
Issued: March 13, 2006**

*Appearances:*  
*David T. Hood, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 8, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated June 7, 2005 denying his occupational disease claim and a nonmerit decision dated July 15, 2005 denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case and over the July 15, 2005 nonmerit decision.

**ISSUES**

The issues are: (1) whether appellant has established that he sustained neuropathy of both feet causally related to factors of his federal employment; and (2) whether the Office properly denied his request for merit review of his claim under section 8128.

**FACTUAL HISTORY**

On April 12, 2005 appellant, then a 56-year-old power plant electrician crew foreman, filed an occupational disease claim alleging that he sustained neuropathy of both feet due to

factors of his federal employment. His supervisor noted on the claim form that appellant had been reassigned to nonsupervisory duties in an office “to accommodate [his] lack of mobility.”

By letter dated April 18, 2005, the Office requested that appellant submit a factual statement describing the specific employment activities he believed caused his condition and a detailed medical report from his attending physician addressing causal relationship. The Office provided him 30 days within which to submit the information.

Appellant did not respond within the time allotted.

By decision dated June 7, 2005, the Office denied appellant’s claim on the grounds that he did not establish that the employment events occurred as alleged. The Office further noted that there was “no medical evidence that provides a diagnosis which could be connected to the claimed event(s).”

On July 7, 2005 appellant requested reconsideration of his claim. He submitted a report dated June 29, 2005 from Dr. Brad J. Capawana, a podiatrist, who indicated that he had treated appellant for foot pain caused by diabetic neuropathy and tarsal tunnel syndrome. He stated:

“Tarsal tunnel syndrome is an entrapment neuropathy of the posterior tibial nerve in the medial compartment of the ankle. It can be caused by long hours of weight bearing on the feet and walking on hard surfaces as well as the varicose veins that can impinge and occupy space in the tarsal tunnel space.”

He described appellant’s pain as “severe and unrelenting” and unrelated to his diabetes. Dr. Capawana stated, “I feel that [he] does meet the criteria for disability and compensation for this disease process due to the long hours he spends on his feet walking on hard surfaces.”

By decision dated July 15, 2005, the Office denied appellant’s request for reconsideration on the grounds that the evidence submitted was insufficient to warrant merit review of the claim. The Office noted that he had not submitted a statement identifying the employment factors to which he attributed his condition.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> 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 filed within the applicable time limitation; that an injury was sustained while 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.<sup>2</sup> These are the essential

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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

elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>3</sup>

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;<sup>4</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>5</sup> and (3) medical evidence establishing 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.<sup>6</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion 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.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant<sup>8</sup> and must be one of reasonable medical certainty<sup>9</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

Appellant filed an occupational disease claim attributing his neuropathy of the feet to factors of his federal employment. He did not, however, describe any of the employment factors that he believed were responsible for his condition on the claim form. By letter dated April 18, 2005, the Office requested that he submit additional information, including a statement which clarified the particular employment activities that he felt caused or contributed to his claimed condition. Appellant, however, did not respond to the Office's request for information. It is his responsibility to establish the factual element of his claim by identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition.<sup>11</sup>

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<sup>3</sup> See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

<sup>4</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>5</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>6</sup> *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>7</sup> *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>8</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>9</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>10</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

<sup>11</sup> See *Marlon Vera*, *supra* note 5.

Despite being provided with an opportunity to do so, appellant failed to submit the evidence necessary to establish a factual basis for his claim.

As appellant has not submitted a statement identifying the specific employment activities or conditions implicated as causing or contributing to the claimed condition, he has not met his burden of proof to establish that he sustained an employment-related bilateral foot condition. Accordingly, the Board finds that he has not established a *prima facie* claim for compensation.<sup>12</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>13</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>14</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>15</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>16</sup>

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>17</sup> The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>18</sup> While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.<sup>19</sup>

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<sup>12</sup> See *Richard A. Weiss*, 47 ECAB 182 (2000).

<sup>13</sup> 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

<sup>14</sup> 20 C.F.R. § 10.606(b)(2).

<sup>15</sup> 20 C.F.R. § 10.607(a).

<sup>16</sup> 20 C.F.R. § 10.608(b).

<sup>17</sup> *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

<sup>18</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

<sup>19</sup> *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

## ANALYSIS -- ISSUE 2

In support of his request for reconsideration, appellant submitted a medical report dated June 9, 2005 from his podiatrist, Dr. Capawana, who diagnosed tarsal tunnel syndrome of both feet due to walking on hard surfaces for extended periods of time. While this evidence was new, it was not relevant or pertinent as it did not address the particular issue which was the basis for the denial of the claim. The Office denied appellant's claim because he did not submit any evidence identifying the factors of employment to which he attributed his bilateral foot condition. Without a complete factual background, the Office is unable to ascertain whether any medical opinion expressed regarding causation is based upon a proper history of injury.<sup>20</sup> Appellant did not submit evidence in support of his request for reconsideration that addressed the factual component of his claim. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>21</sup> The Office, therefore, properly refused to reopen appellant's case for further review of the merits of his claim.

## CONCLUSION

The Board finds that appellant has not established that he sustained neuropathy of the feet causally related to factors of his federal employment. The Board further finds that the Office properly denied his request for merit review of his claim under section 8128.

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<sup>20</sup> Medical conclusions based on inaccurate or incomplete histories are of little probative value and are insufficient to satisfy a claimant's burden of proof. *John W. Montoya, supra* note 9.

<sup>21</sup> See *Ronald A. Eldridge, supra* note 18.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated July 15 and June 7, 2005 are affirmed.

Issued: March 13, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board