

FACTUAL HISTORY

On September 14, 2007 appellant, then a 35-year-old supervisory transportation security officer, filed an occupational disease claim. On September 7, 2007 he first became aware of plantar fasciitis in his left foot. On September 10, 2007 appellant first realized that his condition was caused by standing and walking at work.

By letter dated September 25, 2007, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the additional factual and medical evidence he needed to submit. Regarding the medical evidence, the Office requested a rationalized medical report from appellant's attending physician which described his symptoms, results of examination and tests, diagnosis, treatment provided, the effect of treatment and opinion with medical reasons on whether exposure or incidents in appellant's federal employment contributed to his condition. It also requested that the employing establishment respond to appellant's claim and provide the tasks he performed that required physical exertion, precautions it took to minimize the effects of his activities and a copy of his position description including the physical requirements.

In an undated memorandum received by the Office on October 12, 2007, appellant stated that he walked and stood on hard floors 70 percent to 90 percent of his time at work. He described the development of his foot condition and medical treatment. Appellant stated that, at approximately 11:30 a.m. on September 7, 2007, he stood up from a chair he was sitting in and immediately experienced severe pain due to a cramp in the arch of his left foot. He worked on September 8 and 9, 2007 and sought medical treatment on the night of September 9, 2007 for foot pain. Following a medical evaluation, appellant purchased pain medication and arch support for his shoes. He stated that he had no prior history of any orthopedic injuries. Appellant had not engaged in any sports since high school football and wrestling. He ran while serving in the United States Army for four years from 1993 to 1997 but stated that he had back problems which precluded this activity. Appellant stated that he did not have any current hobbies or engage in recreational activities.

Appellant submitted reports dated September 9 and 18, 2007 of Lynn M. Gross, a physician's assistant, and a September 18, 2007 form report of Dr. Sarah Nyland, a Board-certified family practitioner, which stated that appellant sustained a sprain and strain, plantar fasciitis and tendinitis of the left foot. Dr. Nyland indicated with an affirmative mark that appellant's conditions were caused by walking and standing at work. She restricted him from engaging in such actions.

By decision dated October 30, 2007, the Office found that appellant did not sustain an injury while in the performance of duty. The medical evidence of record failed to provide a history of injury and establish a causal relationship between the alleged left foot conditions and his employment duties.

The Office received Ms. Gross' reports dated October 4 and 18 and November 20, 2007 which reiterated her prior diagnosis of plantar fasciitis. In the October 4, 2007 report, Ms. Gross stated that appellant's condition was more probably than not caused by on-the-job injury. In an

October 4, 2007 report, Dr. Leslie A. Becker, a Board-certified family practitioner, diagnosed plantar fasciitis. He stated that appellant could work eight hours per day with restrictions.

By letter dated December 11, 2007, appellant requested reconsideration of the Office's October 30, 2007 decision. He submitted letters from his coworkers, Henry Morton, Michel Bauman and Ilyana Backus, who stated that they had no knowledge of any foot problems experienced by appellant prior to September 2007. Ms. Backus stated that she witnessed the September 7, 2007 incident. On September 14, 2007 appellant told her about the medical treatment he had received for his plantar fasciitis and inability to stand on his foot. Ms. Backus stated that he was placed on limited/light-duty work and stayed off his feet.

In a November 1, 2007 letter, appellant provided his employment history which included jobs that involved standing and walking. He stated that he did not have any foot problems prior to September 2007. Appellant also stated that Dr. Nyland did not provide a history of a work-related illness because there was no history of injury prior to September 2007.

By decision dated January 22, 2008, the Office denied appellant's request for reconsideration. The evidence submitted was not relevant and, thus, insufficient to warrant further merit review of its prior decision.¹

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his 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.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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

¹ The Board notes that following the issuance of the Office's January 22, 2008 decision, the Office received additional evidence. The Board, however, may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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 a causal relationship 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. 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.⁵ Neither the fact that appellant's condition became apparent during a period of employment nor his belief that the condition was caused by his employment is sufficient to establish a causal relationship.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant has failed to establish a causal relationship between his left foot condition and the accepted factors of his federal employment. The September 9 and 18, 2007 reports of Ms. Gross, a physician's assistant, do not constitute competent medical evidence. A physician's assistant is not a physician as defined under the Act.⁷ Therefore, the Board finds that her reports have no probative value in establishing that appellant sustained an injury while in the performance of duty.

Dr. Nyland's September 18, 2007 report stated that appellant's strain, tendinitis and plantar fasciitis of the left foot were caused by walking and standing at work. However, she did not provide medical rationale explaining how or why the accepted employment factors caused the diagnosed conditions. Dr. Nyland did not discuss the mechanism of the injury or its relationship to the employment factors. The Board has held that a medical opinion not supported by medical rationale is of little probative value.⁸

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a left foot condition causally related to factors of his federal employment as a supervisory transportation security officer. Appellant did not meet his burden of proof.

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁶ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁷ *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); *George H. Clark*, 56 ECAB 162 (2004); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

⁸ *Caroline Thomas*, 51 ECAB 451 (2000).

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,⁹ the Office's regulation 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) constitute relevant and pertinent new evidence not previously considered by the Office.¹⁰ 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.¹¹ 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 of the merits.

ANALYSIS -- ISSUE 2

By letter dated December 11, 2007, appellant disagreed with the Office's decision, which denied his claim on the grounds that the medical evidence of record failed to establish that he sustained a left foot condition causally related to his accepted employment factors. The relevant issue is whether his left foot condition was causally related to the accepted employment factors. The Board notes that this issue is medical in nature.

In support of his reconsideration request, appellant submitted Ms. Gross's October 4 and 18 and November 20, 2007 reports. This evidence is of no probative medical value as the Board found above that a physician's assistant is not a physician as defined under the Act and, therefore, is not competent to provide medical evidence.¹²

Dr. Becker's October 4, 2007 report stated that appellant sustained plantar fasciitis but failed to address whether this condition was caused by the accepted factors of his employment. 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.¹³

Letters from Mr. Morton, Mr. Bauman and Ms. Backus stated that they had no knowledge of any foot problems appellant experienced prior to September 2007. Appellant's November 1, 2007 letter contended that his plantar fasciitis was caused by standing and walking at work. He also contended that Dr. Nyland's report was sufficient to establish his claim as she was not required to provide a history of injury because none existed prior to September 2007. Since the underlying issue in the case is medical in nature, the evidence submitted by appellant are not relevant and, thus, insufficient to constitute a basis for reopening his claim for further

⁹ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [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. 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. § 10.606(b)(1)-(2).

¹¹ *Id.* at § 10.607(a).

¹² *See supra* note 7.

¹³ *Patricia G. Aiken, 57 ECAB 441 (2006).*

merit review. The Board has held that evidence of the nature of any disabling condition and its relationship to a particular employee's work can only be given by a physician fully acquainted with the relevant facts and circumstances of the employment injury and the medical findings.¹⁴ Appellant's own belief that his condition is related to his employment is of no probative value on a medical issue. Thus, his contentions do not have a legal color of validity.¹⁵

The Board finds that appellant did not submit arguments or evidence showing that the Office erroneously applied or interpreted a specific point of law; advancing a relevant legal argument not previously considered; or constituting relevant and new pertinent evidence not considered previously by the Office. As appellant did not meet any of the necessary regulatory requirements, the Board finds that his claim is not entitled to further merit review.¹⁶

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury while in the performance of duty. The Board further finds that the Office properly denied appellant's request for a merit review of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2008 and October 30, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 6, 2008
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁵ See e.g., *Elaine M. Borghini*, 57 ECAB 549, 553 (2006); *Marion Johnson*, 40 ECAB 735 (1989).

¹⁶ See *James E. Norris*, 52 ECAB 93 (2000).