

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GLENN L. STEWART and U.S. POSTAL SERVICE,  
POST OFFICE, New Orleans, La.

*Docket No. 96-2350; Oral Argument Held January 19, 1999;  
Issued March 9, 1999*

Appearances: *Glenn L. Stewart, pro se; Sheldon G. Turley, Jr., Esq.*, for the Director,  
Office of Workers' Compensation Programs.

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met his burden of proof in establishing that he developed sciatica in the performance of duty; (2) whether appellant has met his burden of proof in establishing that he developed bilateral tendinitis in his feet; and (3) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claims for review of the merits on September 7 and September 8, 1995.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet his burden of proof in establishing that he developed sciatica in the performance of duty.

Appellant filed a claim on December 12, 1994 alleging that on December 13, 1993 he sustained a muscle spasm in his neck and shoulder. The Office denied appellant's claim by decision dated August 3, 1995.

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>1</sup> In this case, the Office accepted that the employment incidents occurred as alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or

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<sup>1</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>2</sup> 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>3</sup>

Appellant failed to submit any medical evidence in support of his claim for muscle spasm in his neck and right shoulder. As there is no medical evidence in support of his claim, appellant failed to meet his burden of proof.

The Board further finds that appellant has failed to meet his burden of proof in establishing that he developed bilateral tendinitis of his feet in the performance of duty.

Appellant filed a claim on December 12, 1994 alleging that on June 14, 1994 he developed tendinitis in his feet. By decision dated July 31, 1995, the Office denied appellant's claim.

As noted above, appellant must establish both that he sustained an employment incident and that any injury sustained is causally related to the accepted incident. In this case, the Office accepted that the employment exposure occurred as alleged. However, appellant has not submitted sufficient medical evidence to meet his burden of proof.

In support of his claim for tendinitis, appellant submitted a report from Dr. Green dated January 17, 1995. Dr. Green noted that he had treated appellant since July 1, 1994 for Achilles tendinitis of both lower extremities, recurrent muscle spasm in the neck and shoulders, chronic back pain syndrome and peripheral sensory neuropathy of both feet. As Dr. Green did not provide an opinion on the causal relationship between appellant's diagnosed conditions and his accepted employment incidents, his report is not sufficient to meet appellant's burden of proof in establishing that he sustained an injury in the performance of duty.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claims for consideration of the merits on September 7 and 8, 1995.

Appellant requested reconsideration of the Office's August 3, 1995 decision denying his claim for muscle spasm on August 30, 1995. Appellant also requested reconsideration of the Office's July 31, 1995 decision denying his claim for bilateral foot tendinitis on August 30, 1995. The Office denied reconsideration of appellant's claim for muscle spasm on September 8,

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<sup>2</sup> See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>3</sup> *James Mack*, 43 ECAB 321 (1991).

1995. The Office also denied reconsideration of appellant's claim for bilateral foot tendinitis on September 7, 1995.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>4</sup> Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without review the merits of the claim.<sup>5</sup>

Appellant failed to submit additional new evidence or legal argument in support of either of his requests for reconsideration. Therefore, the Office properly declined to reopen his claims for review of the merits.<sup>6</sup>

The decisions of the Office of Workers' Compensation Programs dated September 8, September 7, July 31 and August 3, 1995 are hereby affirmed.

Dated, Washington, D.C.  
March 9, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>4</sup> 20 C.F.R. § 10.138(b)(1).

<sup>5</sup> 20 C.F.R. § 10.138(b)(2).

<sup>6</sup> The Board notes that following the Office's September 7 and 8, 1995 decisions appellant submitted additional new evidence. As the Office did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal; *see* 20 C.F.R. § 501.2(c)