

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL G. COPPLE and U.S. POSTAL SERVICE,  
POST OFFICE, Tampa, FL

*Docket No. 99-1331; Submitted on the Record;  
Issued August 7, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of disability on February 23, 1997 causally related to his June 16, 1995 accepted employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a merit review in its February 12, 1999 decision.

On June 19, 1995 appellant, then a 33-year-old carrier technician, filed a notice of traumatic injury, alleging that he sprained his left ankle on June 16, 1995 in the course of his federal employment. The Office subsequently accepted the claim for a left ankle strain and awarded medical benefits. Appellant returned to full duty on July 17, 1995.

On March 20, 1997 appellant filed a notice of recurrence of disability, Form CA-2a, alleging that he sustained a recurrence of disability on February 23, 1997. He indicated that, since his original injury, his ankle remained grossly unstable and constantly ached. Appellant stopped working on February 24, 1997.

On April 23, 1997 the Office advised appellant of the information needed to establish his claim for a recurrence of disability, including a physician's opinion explaining the causal relationship between his current disability or condition and the original injury.

Appellant subsequently submitted progress notes dated December 20, 1995 through July 15, 1997 documenting his history of treatment for his ankle injury at a Veterans' Administration Hospital. These progress notes included several reports from podiatrists submitted after his alleged recurrence of disability on February 23, 1997. On March 13, 1997 Dr. Stephanie Phelan, a podiatrist, diagnosed a left ankle sprain. On March 20, 1997, Dr. Bernard, a podiatrist, indicated that appellant injured his ankle three weeks prior and diagnosed a left ankle sprain. On April 3, 1997 Dr. Sharon E. Pals, a podiatrist, diagnosed left ankle degenerative joint disease and lateral ankle instability. On May 12, 1997 Dr. Pals

diagnosed lateral ankle instability. Finally, on July 15, 1997 Dr. Mark A. Davis, a podiatrist, noted left ankle pain and instability.

By decision dated July 21, 1997, the Office denied appellant's claim for a recurrence of disability finding that the evidence failed to establish that the claimed recurrence was causally related to the June 16, 1995 injury.

On August 7, 1997 appellant's representative requested an oral hearing.

On October 30, 1997 Dr. Lisa Norman, a podiatrist, indicated that appellant was strong enough to return to his job with the continued use of an ankle brace and a reasonable work load.

At a hearing held on February 10, 1998, appellant testified that he believed that his orthotics caused his claimed recurrence of disability. He stated that he injured his ankle initially in 1983 or 1984 while playing volleyball during his time in the navy. Appellant stated that the injury was treated surgically in 1988 and that he received a service-connected disability of 10 percent. He further stated that his ankle bothered him in 1992 and that he underwent another surgery that year. Appellant stated that he did not notice any other problems until his June 16, 1995 injury. He stated that on February 23 1997 he was jogging while wearing orthotics when his ankle went out. Appellant indicated that he was not working at that time.

Appellant subsequently submitted reports noting the ankle operations he underwent in 1988 and 1992.

By decision dated April 6, 1998, the Office hearing representative found that appellant failed to establish a recurrence of disability on February 23, 1997 causally related to his June 16, 1995 work injury.

On June 22, 1998 appellant requested reconsideration without submitting additional evidence.

By decision dated August 11, 1998, the Office denied appellant's request for reconsideration on the grounds that he failed to raise a substantive legal question and did not submit new on relevant evidence.

On September 15, 1998 appellant again requested reconsideration. In support, he submitted an August 27, 1998 report from Dr. Edward N. Feldman, a Board-certified orthopedic surgeon. Dr. Feldman reviewed the history of appellant's injury and the treatment he received. He examined appellant's left ankle and noted a healed scar, but no gross instability. Dr. Feldman stated that inversion and eversion stress did not produce pain or signs of instability. He stated that Drawer's sign was negative and that the neurological status of the foot was intact. Dr. Feldman noted that appellant could walk on both his heels and toes. He diagnosed recurrent inversion sprains, with injury to the lateral collateral ligaments of the left ankle and status post stabilization procedure with rerouting of the peroneal tendons. Dr. Feldman concluded that the objective findings and subjective complaints were causally related to the work-related accident of June 16, 1995. Finally, he noted that appellant was treated with orthotics and that they caused him to sprain his ankle the first day he wore them.

By decision dated October 8, 1998, the Office denied modification of the prior decisions. The Office found that Dr. Feldman failed to provide an explanation for his conclusion that appellant's present condition was causally related to the June 16, 1995 injury. The Office further indicated that, although he attributed appellant's present condition to the orthotics he wore prior to the February 27, 1998 alleged recurrence, that the record was devoid of any evidence establishing that orthotics were prescribed as a result of the June 16, 1995 work injury.

On November 18, 1998 appellant's representative requested reconsideration. In support, he submitted a November 11, 1998 letter from Dr. Feldman. In that letter, Dr. Feldman indicated that appellant's surgery in February 1997 was related to the June 16, 1995 work injury.

By decision dated February 12, 1999, the Office found that the evidence submitted in support of the request for review was cumulative and insufficient to warrant review of the prior decision. In an accompanying memorandum, the Office noted that Dr. Feldman's opinion was the same as his previous opinion, which failed to provide medical rationale relating appellant's present condition to the accepted work injury.

The Board finds that appellant failed to establish that he sustained a recurrence of disability on February 23, 1997 causally related to his June 16, 1995 accepted employment injury.

Where appellant claims a recurrence of disability to an accepted employment-related injury, he has the burden of establishing by the weight of the reliable probative evidence that the recurrence of the condition for which he seeks compensation is causally related to the accepted employment injury.<sup>1</sup> As part of this burden, appellant must submit rationalized medical opinion evidence based on a complete and accurate factual and medical background showing a causal relationship between the current condition and the accepted employment-related injury.

In the present case, the only evidence that appellant submitted which addressed whether his alleged February 23, 1997 recurrence of disability was related to his June 16, 1995 accepted employment injury was the August 27, 1998 report of Dr. Feldman, a Board-certified orthopedic surgeon. He performed a physical examination of appellant's left ankle and diagnosed recurrent inversion sprains, with injury to the lateral collateral ligaments of the lefty ankle and status post stabilization procedure with rerouting of the peroneal tendons. Dr. Feldman, however, reported completely normal clinical findings. In this regard, he stated that the ankle showed no gross instability; that inversion and eversion stress did not produce pain or signs of instability; that his Drawer's sign was negative; that the foot was neurologically intact; and that he could walk on both his heels and toes. Despite these normal clinical findings, Dr. Feldman opined that objective findings and subjective complaints showed that the diagnosed conditions were causally related to the June 16, 1995 injury. Moreover, he stated that appellant's orthotics caused his February 23, 1997 ankle sprain. Dr. Feldman, however, failed to provide any explanation for his conclusions, which were not supported by his clinical findings. Accordingly, his opinion is

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<sup>1</sup> See *Henry L. Kent*, 34 ECAB 361 (1982); *Dennis E. Twadzik*, 34 ECAB 536 (1983).

entitled to little weight. Appellant has failed to meet his burden of proof to establish a recurrence of disability.<sup>2</sup>

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for a merit review on February 12, 1999.

Under section 8128(a) of the Act,<sup>3</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,<sup>4</sup> which provides that a claimant may obtain review of the merits if his written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(i) Shows that Office erroneously applied or interpreted a specific point of law;  
or

“(ii) Advances a relevant legal argument not previously considered by Office; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the Office.”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>5</sup>

In support of his request for reconsideration, appellant submitted a November 11, 1998 letter from Dr. Feldman, which merely restated the previous conclusion made in his August 27, 1998 report that he believed appellant's present condition was related to his accepted work injury. Consequently, Dr. Feldman's second report is cumulative and insufficient to reopen appellant's claim for a merit review.

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<sup>2</sup> *Lee R. Haywood*, 48 ECAB 145 (1996).

<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b) (1999).

<sup>5</sup> 20 C.F.R. § 10.608(b).

The decisions of the Office of Workers' Compensation Programs dated February 12, 1999, October 8, August 11 and April 6, 1998 are affirmed.

Dated, Washington, D.C.  
August 7, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member