

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH SABLAN and DEPARTMENT OF THE NAVY,
SHIP REPAIR FACILITY, Guam

*Docket No. 98-426; Submitted on the Record;
Issued January 27, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the infection and amputation of appellant's right fourth toe is causally related to factors of his employment.

On January 29, 1997 appellant, then a 44-year-old journeyman marine pipefitter, filed a claim for an infection of his right fourth toe. Appellant stated that he developed a blister, which appeared minor, that he applied first aid, but that continued wearing of safety shoes aggravated the blister until it became infected. This toe was amputated by Dr. Ricardo Eusebio, a Board-certified surgeon, on February 21, 1997. By letter dated April 23, 1997, the Office of Workers' Compensation Programs advised appellant that the evidence was insufficient to establish his claim, and that he needed to submit a physician's report including a history of injury, diagnosis, and the physician's opinion supported by medical rationale as to the causal relationship between his disability and the injury. The Office allotted appellant 30 days to submit this information.

By decision dated May 16, 1997, the Office found that the medical evidence was insufficient to establish causal relationship, as it did not provide medical rationale explaining how work factors contributed to appellant's condition. The Office reissued this decision on May 29, 1997.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of

employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.¹

The Board finds that appellant has not met his burden of proof.

There is no reason to believe that appellant was not exposed to the employment factor implicated in his claim: the wearing of safety shoes. Appellant, however, has not submitted medical evidence sufficient to establish that this factor of employment is causally related to the infection or ultimate amputation of his right fourth toe. Dr. Eusebio, the Board-certified surgeon who amputated appellant's toe, has not provided a report containing an opinion that the infection that resulted in the amputation was related to appellant's wearing of safety shoes at work. A report from Dr. Eusebio dated March 4, 1997 contains a history that appellant's blister became infected from continued wearing of safety shoes, but this was a history provided by appellant, not a medical opinion by the physician. A February 24, 1997 report indicating appellant's cellulitis of the right fourth toe was caused or aggravated by blisters from safety shoes contains Dr. Eusebio's signature, but Dr. Eusebio is listed as the physician to whom the employee was referred. In the space for signature of physician is typed the name of a physician's assistant not affiliated with Dr. Eusebio's practice. As this report appears to have been prepared by the physician's assistant,² it does not constitute competent medical opinion evidence.³

Dr. E. Leon Guerrero submitted a March 31, 1997 report that set forth an extensive history of appellant's condition of the right fourth toe: an infection since approximately Christmas, self-treatment at home, and medical treatment beginning January 10, 1997. Dr. Guerrero also noted that appellant "felt that the use of his work shoes seemed to aggravate the blister." Dr. Guerrero, however, did not render a medical opinion that wearing of safety shoes or any other factor of appellant's employment caused or aggravated the condition of his right fourth toe. The record is devoid of such a medical opinion. For this reason, appellant has not met his burden of proof.

¹ *Froilan Negrón Marrero*, 33 ECAB 796 (1982).

² This report lists the date of first examination as January 10, 1997; Dr. Eusebio first examined appellant on January 24, 1997.

³ *Guadalupe Julia Sandoval*, 30 ECAB 1491 (1979) (explaining that a physician's assistant is not a "physician" within the definition contained in section 8101(2) of the Federal Employees' Compensation Act.)

The decision of the Office of Workers' Compensation Programs dated May 29, 1997 is affirmed.

Dated, Washington, D.C.
January 27, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member