

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CATHY KIENE and U.S. POSTAL SERVICE,  
POST OFFICE, Shawnee, KS

*Docket No. 99-1500; Submitted on the Record;  
Issued October 24, 2000*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant's plantar fasciitis had resolved by October 1, 1997; (2) whether appellant has established any additional conditions as causally related to her federal employment; and (3) whether the Office properly denied appellant's request for reconsideration without merit review of her claim.

Appellant filed a claim on January 8, 1998 alleging that she sustained a left foot injury causally related to her duties as a letter carrier. The record indicates that she had worked from 1988 to May 1994, stopped working due to personal reasons, and was reinstated on October 26, 1996. According to appellant, she then worked long hours that included walking and standing for extended periods and her feet began hurting shortly after her return to work. She indicated that she eventually underwent foot surgery and was currently working light duty.

By decision dated May 15, 1998, the Office denied the claim on the grounds that the medical evidence was insufficient to establish a diagnosed condition causally related to appellant's federal employment. In a decision dated October 22, 1998, the Office modified its prior decision to accept plantar fasciitis. The Office determined that the medical evidence established that her current foot condition was not employment related and she was advised to submit an appropriate claim for any wage loss through October 1, 1997.

By decision dated December 1, 1998, the Office reviewed the case on its merits and denied modification. The Office indicated that the prior decision had accepted plantar fasciitis "not to exceed October 1, 1997." In a decision dated March 24, 1999, the Office denied appellant's request for reconsideration without merit review of the claim.

The Board has reviewed the record and finds that the Office properly determined that the accepted condition of plantar fasciitis had resolved by October 1, 1997.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>1</sup>

In this case, the Office accepted plantar fasciitis, but indicated that it had resolved by October 1, 1997. In support of this determination, the Office cited an October 21, 1998 report from an Office medical adviser, who opined that the plantar fascial pain had been “successfully managed and was status quo by October 1, 1997.” In a treatment note dated October 1, 1997, Dr. T. Reid Ecton, a podiatrist, reported that appellant was not having any foot pain at that time. In treatment notes dated November 20 and 26, 1997, Dr. Dan Robinson, a podiatrist, diagnosed chronic plantar fasciitis, but failed to indicate whether this represented a current employment-related condition. In the absence of probative evidence of a continuing plantar fasciitis causally related to appellant’s federal employment, the Board finds that the opinion of the Office medical adviser represents the weight of the evidence on this issue.

The Board further finds that the record requires further development with respect to whether appellant has any additional employment-related left foot conditions.

In a report dated July 16, 1997, Dr. Ecton diagnosed a stress fracture from x-rays taken that day, stating, “I think what [appellant] did is she went back from her rest period to her letter carrier activities, went from very mediocre activity level to an excessive walking activity level and I think that is when she stressed this.” In an undated report received by the Office on June 30, 1998, Dr. Ecton stated that appellant “became very active (walking) after a long period of inactivity (off work for eight months). This combination is classic for the development of a bone stress fracture from the weakened structure of inactivity and a resultant stress fracture would be expected from this combination of events.”

On the other hand, the Office medical adviser opined that appellant did not have a stress fracture, noting that the x-ray report dated July 16, 1997 showed no fracture identified. He further indicated that continuing treatment was the result of a nonemployment-related incident on November 2, 1997.<sup>2</sup>

Section 8123(a) of the Federal Employees’ Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.<sup>3</sup> When there are opposing medical reports of virtually equal weight and

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<sup>1</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>2</sup> The record contains an urgent care form report indicating that appellant had stepped on a rock the previous night.

<sup>3</sup> *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.<sup>4</sup>

The Board finds that there is a conflict in the medical evidence with respect to whether appellant sustained a stress fracture causally related to her federal employment. On remand, the Office should secure a reasoned opinion from an appropriate impartial medical specialist as to whether appellant had a stress fracture or other condition causally related to her federal employment. After such further development as the Office deems necessary, it should issue an appropriate decision.

In view of the Board's finding, it will not address the denial of reconsideration issue.

The decisions of the Office of Workers' Compensation Programs dated March 24, 1999, December 1 and October 22, 1998 are affirmed as to the finding that appellant's accepted condition of plantar fasciitis resolved by October 1, 1997 and are set aside, and the case is remanded for further action consistent with this decision of the Board, regarding the issue of whether appellant has any additional conditions causally related to her federal employment.

Dated, Washington, DC  
October 24, 2000

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>4</sup> *William C. Bush*, 40 ECAB 1064 (1989).