U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EVA G. ROTHSCHILD and DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

Docket No. 01-1026; Submitted on the Record;
Issued December 20, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that her foot condition was causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for merit review.

On March 23, 2000 appellant, then a 53-year-old electrician, filed an occupational disease claim, alleging that her right foot condition of plantar fasciitis was causally related to factors of her federal employment.

In a letter dated April 12, 2000, the Office informed appellant that the materials appellant submitted were not sufficient to establish appellant's claim for benefits. She was advised to provide additional factual information and to provide a comprehensive medical report from her treating physician, which contains a medical explanation of how appellant's federal employment exposure contributed to the condition diagnosed.

Appellant provided the requested factual information and submitted additional medical evidence.

By decision dated May 25, 2000, the Office rejected appellant's claim finding that she had failed to establish fact of injury. The Office found that appellant "experienced the claimed employment factor," but that the evidence did not establish that a medical condition had been diagnosed as a result of the employment factor.

In a letter dated June 20, 2000, appellant requested reconsideration of her claim and, in a decision dated September 21, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted could not be considered relevant to the issue in this case and, therefore, insufficient to warrant review of the prior decision.

The Board has duly reviewed the case record on appeal and finds that appellant has not established that her right foot plantar fasciitis condition was causally related to factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including the fact 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 is causally related to the employment injury.[2]

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 the 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 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.[3] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[4] 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,[5] must be one of reasonable medical certainty[6] 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.[7] The mere fact that a condition 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 condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by employment conditions is sufficient to establish causal relation.[8]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[4] The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed with to establish a claim; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[8] *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

In the present case, appellant alleged that her right foot plantar fasciitis condition was caused or materially aggravated by working on steel surfaces and standing on tiptoe while wearing steel toed boots. The Office found, however, that appellant did not submit sufficient medical evidence to establish that she sustained an occupational injury due to these factors.

In support of her claim, appellant submitted disability notes from Dr. David W. Genuit, a podiatrist and appellant's treating physician. These notes are insufficient to establish appellant's claim as they lack description of history of employment factors and the findings and results of examination. Most importantly, the disability notes do not contain an opinion connecting the medical condition to employment factors/activities appellant performed.

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between her claimed condition and her employment.[9] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and her medical history, state whether the employment injury caused or aggravated her diagnosed conditions and present medical rationale in support of his or her opinion. As no medical evidence identifying the cause of appellant's right foot plantar faciitis was submitted, appellant has failed to meet the first requirement to establish the presence or existence of the disease for which compensation is claimed in an occupational disease claim. Therefore, she has failed to discharge her burden of proof.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.[10] Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[11] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[12] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[13]

[9] *Donald W. Long*, 41 ECAB 142 (1989).

[10] 20 C.F.R. § 10.606(b)(2) (1999).

[11] 20 C.F.R. § 10.608(b) (1999).

[12] *Daniel Deparini*, 44 ECAB 657 (1993).

[13] *Id.*

Appellant's June 20, 2000 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Her request for reconsideration is essentially a reiteration of her belief that her right foot condition is causally related to her employment activities. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant is also not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).

In support of her request for reconsideration, appellant submitted a Form CA-20, attending physician's report from Dr. Genuit dated June 6, 2000. He noted that appellant was first examined November 26, 1996 and reported that she had fell on stairs November 24, 1996, exacerbating pain present from previous injuries in 1986 and 1987. Dr. Genuit diagnosed chronic plantar fascitis, both feet; and traumatic synovitis, left foot and opined by a check mark that appellant's condition was caused or aggravated by her employment by stating that activity on appellant's feet increases pain, ankle injury exacerbates problem. This evidence, however, does not specifically address appellant's employment activities and causally relate it to her present condition. Because this report does not specifically address the relevant issue on reconsideration, this evidence does not warrant reopening the claim for a merit review.[14] Additionally, Dr. Genuit describes a prior injury and a diagnosis, which is inconsistent with the current claim.

A July 24, 2000 disability note from Dr. Genuit was submitted. As this note essentially duplicates the earlier disability notes of record, it does not constitute a basis for reopening appellant's case for merit review.[15] Similarly, a June 22, 2000 note from Dr. Genuit listing the dates appellant was seen for treatment does not address the particular issue involved and cannot constitute a basis for reopening a case.[16]

As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying appellant's September 21, 2000 request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated September 21 and May 25, 2000 are hereby affirmed.

Dated, Washington, DC
December 20, 2001

[14] Evidence that does not address the particular issue involved does not constitute a basis for reopening the claim. *Richard L. Ballard*, 44 ECAB 146, 150 (1992).

[15] *Id.*

[16] *Id.*

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member