U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN E. CAVEY and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Nashville, TN

Docket No. 99-1938; Submitted on the Record;
Issued January 22, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant has established that she developed plantar fasciitis, or another foot condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On August 28, 1998 appellant, then a 39-year-old data collection technician, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that she developed plantar fasciitis causally related to her employment. On the reverse of the form, appellant's supervisor did not indicate that appellant stopped working.

Evidence accompanying the claim included a statement from appellant detailing her medical history, medical reports dated April 27 and June 19, 1998 from Dr. Jeffrey L. Herring, a Board-certified orthopedic surgeon, and a medical report dated August 19, 1998 from Dr. Barrett F. Rosen, also a Board-certified orthopedic surgeon. These reports noted a history of heel and ankle pain, but made no specific diagnosis. Additionally, Dr. Herring's April 27, 1998 report notes that he could not directly relate appellant's condition to her work activity.

The employing establishment forwarded certification from Dr. Rosen, dated October 14, 1998, in which he diagnosed neurapaxia of the dorsal branch of the superficial peroneal nerve. The employing establishment also forwarded a medical report from Dr. Rosen in which he diagnosed pain in the limb and plantar fasciitis.[1] On November 20, 1998 Dr. Rosen limited appellant's activities to lifting no more than 5 pounds continuously and 20 to 30 pounds intermittently. He also limited appellant to not standing or walking more than 20 minutes at a time. A medical report dated January 8, 1999, signed by Dr. Rosen, continued the same work restrictions.

[1] The date of this report and a third condition diagnosed is illegible.

Additional medical evidence included a letter report from Dr. Frank E. Jones, a Board-certified orthopedist, and additional reports from Dr. Rosen dated January 7, January 30, March 13 and September 11, 1998. Dr. Jones noted in his report that he could not explain the basis for appellant's paresthesias.

In a February 24, 1999 letter, the Office advised appellant that the information submitted in her claim was not sufficient to determine whether appellant was eligible for benefits under the Federal Employees' Compensation Act.[2] Further, the Office advised appellant of the additional medical and factual evidence needed to support her claim. In particular, appellant was advised to provide a physician's opinion, with medical reasons for such opinion, as to how the work incident caused or aggravated the claimed injury. On February 22, 1998 Dr. Rosen submitted reports dated September 25, October 9 and November 20, 1998 and January 8, 1999, indicating that appellant continued to be symptomatic regarding her feet but that she was improving. By letter dated March 11, 1999, the employing establishment forwarded a February 24, 1999 letter from Dr. Rosen in which he stated that nothing in his records indicate that appellant's foot problem was work related.

By decision dated March 30, 1999, the Office denied appellant's claim. The Office found that, while the record supports that the claimed exposure occurred, the record did not confirm that a medical condition resulted.

On April 17, 1999 appellant requested reconsideration of the Office's March 20, 1999 denial of claim. Appellant enclosed copies of previously filed medical reports from Drs. Jones, Rosen and Herring.

By decision dated May 13, 1999, the Office denied appellant's request for reconsideration. The Office found that the evidence submitted was of a cumulative and repetitious nature and was not sufficient to warrant a merit review of the March 30, 1999 decision.

The Board finds that appellant has not met her burden of proof in establishing that she sustained plantar fasciitis or another foot condition, causally related to her federal employment.

An employee seeking benefits under the Act has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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 are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

[2] 5 U.S.C. §§ 8101-8103.

[3] *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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 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 claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. 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 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.[5]

In the instant case, appellant has not provided rationalized medical opinion evidence supporting a causal relation between her plantar fasciitis and her work conditions.

As noted above, part of the burden of proof includes the submission of rationalized medical evidence establishing that the claimed condition is causally related to employment factors. As appellant has not submitted such evidence, she has not met her burden of proof in establishing her claim.

In the instant case, Dr. Rosen made a diagnosis of plantar fasciitis, however, by letter dated February 24, 1999, he noted that his records did not indicate that appellant's foot problem was related to any work injury or similar activity. Moreover, in his April 27, 1998 report, Dr. Herring noted that he could directly relate appellant's condition to her work activities. Likewise, Dr. Jones opined that he could not explain the presence of appellant's paresthesias.

While the remainder of the medical evidence does address the pain in appellant's foot and heel, there is no mention of a causal relation.

As appellant has failed to attribute the plantar fasciitis on any other foot condition to her federal employment, the Office properly denied her claim.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

Section 10.606(b)(2) 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 specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously

[5] *Id.*

considered by the Office.[6] Section 10.608(b) provides that when an application for review of the merits of a claim which does not meet at least one of these three requirements the Office will deny the application for review without review of the merits of the claim.[7]

In her request for reconsideration, appellant did not submit any new evidence nor did she specify any erroneous application of law or advance a point of law not previously considered by the Office. As the issue in this case is medical in nature, the submission of new medical evidence addressing whether employment factors caused or aggravated the claimed condition was necessary to require the Office to reopen the claim for a merit review. However, the only medical reports submitted were Dr. Jones' September 11, 1997 report; Dr. Rosen's reports dated January 7 and 30, August 19, 1998, September 11 and 25 and October 9, 1998; and Dr. Herring's April 27 and June 19, 1998 reports. These reports were previously of record and considered by the Office in its March 30, 1999 decision. The Board has held that material which is repetitious or duplicative of that already in the case record is of no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.[8] For these reasons, the Board finds that the Office properly denied appellant's request for reconsideration without conducting a merit review of the claim.

The decisions of the Office of Workers' Compensation Programs dated May 13 and March 30, 1999 are hereby affirmed.

Dated, Washington, DC
January 22, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

[6] 20 C.F.R. § 10.606(b)(2) (1999).

[7] 20 C.F.R. § 10.608(b) (1999).

[8] *See Eugene F. Butler*, 36 ECAB 393, 398 (1984).