

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEATRICE J. ADAMS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Salisbury, NC

*Docket No. 00-1571; Submitted on the Record;
Issued March 9, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established a recurrence of disability commencing May 4, 1998 causally related to a September 17, 1997 employment injury; (2) whether appellant has established any additional conditions as causally related to the September 17, 1997 injury; and (3) whether the Office of Workers' Compensation Programs properly determined that appellant's requests for reconsideration were insufficient to warrant merit review of the claim.

On September 17, 1997 appellant, then a 63-year-old rehabilitation aide, filed a claim alleging that she sustained a left foot injury when her foot was struck by a wheelchair. The Office accepted a left heel contusion; appellant returned to a light-duty position. On May 14, 1998 she filed a notice of recurrence of disability for the period May 4 to 14, 1998.

By decision dated July 17, 1998, the Office denied appellant's claim. In a decision dated April 27, 1999, an Office hearing representative affirmed the prior decision. In a decision dated September 22, 1999, the Office denied appellant's June 10, 1999 request for reconsideration without merit review of the claim. By decision dated March 10, 2000, the Office denied appellant's February 24, 2000 request for reconsideration without merit review of the claim.

The Board finds that appellant has not established a recurrence of disability commencing May 4, 1998.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this

burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.¹

In this case, the record contains a treatment note dated May 5, 1998 from Dr. Winfrey Whicker, a family practitioner, who noted a “recurrence of painful left heel” without further explanation. Reports dated May 5 and 12, 1998 contain diagnoses of tendinitis heel and tendinitis ankle, without further discussion. In a report dated March 18, 1999, Dr. Whicker indicated that appellant complained of pain in both feet and “the pain in the left ankle was a recurrence of the same problem that occurred when her foot was injured.” Dr. Whicker does not provide a clear diagnosis, with medical reasoning, to support causal relationship with the September 17, 1997 injury, nor does Dr. Whicker discuss disability for work from May 4 to 14, 1998.

The Board accordingly finds that the medical evidence is not sufficient to establish a recurrence of disability commencing May 4, 1998. It is appellant’s burden of proof to submit probative medical evidence establishing a change in the nature of her employment injury commencing May 4, 1998 and she has not met her burden in this case.

The Board further finds that appellant has not established any additional conditions as causally related to the September 17, 1997 employment injury.

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³

As noted above, the medical evidence includes diagnoses of tendinitis of the heel and ankle; there is also an indication that appellant reported right foot pain. The medical evidence does not contain a reasoned opinion on causal relationship with the employment injury. The record also contains a form report (CA-20) dated November 14, 1997 from Dr. Whicker diagnosing plantar fasciitis and checking a box “yes” that the condition was causally related to “walking.” The checking of a box “yes” is of limited probative value,⁴ and moreover Dr. Whicker refers to walking, rather than the September 17, 1997 employment injury. The Board finds no probative evidence to establish plantar fasciitis or other conditions causally related to the employment injury.

The Board further finds that the Office properly denied appellant’s requests for reconsideration without merit review of the claim.

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

² 5 U.S.C. §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁵ the Office's regulations provide 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 considered by the Office.⁶ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁷

With her requests for reconsideration, appellant did not submit new relevant medical evidence. In a May 20, 1999 report, Dr. James Mazur, a podiatrist, indicated that appellant was seen on July 6, 1998 and had Haglund's deformity and possible Achilles tendinitis. He did not discuss causal relationship with employment or provide other relevant evidence. Appellant also submitted reports of a physical therapist, which are of no probative medical value.⁸

The Board finds that appellant has not met any of the requirements of section 10.606(b)(2), and therefore the Office properly refused to reopen the case for merit review.

The decisions of the Office of Workers' Compensation Programs dated March 10, 2000, September 22 and April 27, 1999 are affirmed.

Dated, Washington, DC
March 9, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁵ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

⁶ 20 C.F.R. § 10.606(b)(2) (1999).

⁷ 20 C.F.R. § 10.608(b) (1999); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

⁸ *Barbara J. Williams*, *supra* note 4.