

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THOMAS WATERS and U.S. POSTAL SERVICE,  
POST OFFICE, Fort Madison, IA

*Docket No. 03-350; Submitted on the Record;  
Issued November 5, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether the Office abused its discretion in denying appellant reimbursement for foot surgery performed in 1999.

On December 13, 2001 appellant, then a 53-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that walking 12 miles a day caused him to have very sore feet and various other foot conditions. He noted that his right foot had been sore and uncomfortable for three years, causing him to put more weight on his left foot, which resulted in a pinched nerve in his left foot. Appellant indicated that the nerve was partially removed in 1999, but the foot remained painful.

The record indicates that appellant has filed three claims regarding his feet. He also filed an occupational disease claim, number 112003319 for a left ankle injury that was denied on December 13, 2001 because he submitted no medical evidence. On February 11, 2001 appellant filed an occupational disease claim that was accepted for bilateral plantar fasciitis on July 8, 2002.<sup>1</sup> Claim number 112006434 was originally denied on December 13, 2001 due to insufficient medical evidence, but was accepted on reconsideration for left third intermetatarsal neuroma.

The record contains a November 24, 1998 progress note from Dr. Mark Saathoff, an attending podiatrist, who wrote that appellant was under his care for neuroma, third intermetatarsal space on his left foot and bilateral plantar fasciitis caused by extended walking at his work. In a January 25, 2001 report, Dr. Ned Amendola, an attending Board-certified orthopedic surgeon,<sup>2</sup> wrote that a magnetic resonance imaging (MRI) scan of appellant's left ankle indicated a two to three millimeter subchondral cyst in the distal tibia, which did appear to

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<sup>1</sup> The record before the Board contains documents for claims 112008896, 112006434 and 112003319.

<sup>2</sup> Dr. Amendola signed his report "Ned Amendola," but it appears from the record that his given name is Annunziato.

penetrate in the tibiotalar joint space. He diagnosed left metatarsalgia, bilateral ankle pain and possible cystic lesion of the left distal tibia and indicated that with conservative management his pain and discomfort should gradually improve, but may not completely resolve. Dr. Amendola noted that appellant was being fitted with orthotics.

In a January 8, 2002 report, Dr. Amendola indicated that appellant has a metatarsalgia on the left that seems to be improved with orthotics, yet he still has some discomfort and he has a cystic lesion in the distal tibia that may be related to that, but is more likely an overload problem. He noted that appellant's treatment plan was to continue with conservative management that along with a gradual change in his activity level should lead to gradual improving. Dr. Amendola noted that he did not think surgery was necessary. In a March 12, 2002 report, Dr. William Pontarelli, an attending Board-certified orthopedic surgeon, wrote that appellant presented with pain and tenderness in his feet with an alignment problem creating a pes planus or flatfoot disorder. He noted that appellant's orthotics do not seem to have completely corrected the problem and it is doubtful that he would benefit further from them. In an April 1, 2002 progress note, Dr. Saathoff wrote that appellant's occupation as a letter carrier has been a direct cause for his past and current foot problems, which include neuritis/neuroma, strained ligaments and tendons.

In a July 10, 2002 letter to appellant, the Office explained that there is no medical report in any of the three case records that discusses his January 1999 surgery. The letter noted that if the surgery was related to appellant's foot condition it would be covered but it would not be covered if it was related to any condition that had not been accepted.

In an August 19, 2002 letter, appellant described his work conditions including being on his feet eight hours a day and walking on uneven surface's etc. He also wrote that he has several things wrong with his feet, that Dr. Saathoff removed a pinched nerve in January 1999 that ended a burning sensation he was experiencing and gave him orthotics because his ligaments and tendons were stretched. Appellant noted that he subsequently paid for new orthotics and that all he wants is for the foot-related doctor fees and orthotics paid.

In a November 7, 2002 decision, the Office accepted appellant's claim for intermetatarsal neuroma. It also denied coverage for the 1999 surgery noting that no medical documentation regarding surgery for this condition was found in any of appellant's three case records and that it is unknown what specific type of surgery was performed or whether the surgery was necessitated by the condition and or employment factors.<sup>3</sup>

The Board finds that the Office did not abuse its discretion in denying appellant authorization or reimbursement for a surgical procedure on his foot.

Section 8103(a) of the Federal Employees' Compensation Act states in pertinent part: "The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of

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<sup>3</sup> It is not clear from the record or from his letter of appeal to the Board if appellant is seeking reimbursement for the 1999 surgery on his left foot or authorization for a new surgical procedure.

disability or aid in lessening the amount of the monthly compensation.”<sup>4</sup> In order to be entitled to reimbursement of medical expenses, appellant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.<sup>5</sup> Proof of causal relationship in a case such as this, must include supporting rationalized medical evidence.<sup>6</sup>

In the present case, appellant has not submitted sufficient medical evidence to meet his burden of proof to establish that the 1999 surgery was causally related to an accepted injury. In his April 1, 2002 progress note, Dr. Saathoff, an attending podiatrist, who performed the 1999 surgery wrote that appellant’s occupation as a letter carrier has been a direct cause for his past and current foot problems, which include neuritis/neuroma, strained ligaments and tendons, but he did not explain how the surgery was related to one of appellant’s accepted conditions or how the surgery would improve that condition. The Office, in its a July 10, 2002 letter to appellant, explained that there was no medical report in any of the three case records that discusses his January 1999 surgery, nor is there is there a medical report suggesting future surgery is necessary or recommended as a result of an accepted injury. In a January 25, 2001 report, Dr. Amendola, an attending Board-certified orthopedic surgeon, recommended conservative treatment. In his January 8, 2002 report, he indicated that appellant’s treatment plan was to continue with conservative management treatment that he opined would, along with a gradual change in appellant’s activity level, lead to gradual improvement. Dr. Amendola also specifically noted that he did not think surgery was necessary.

Absent a rationalized medical report explaining how the 1999 surgery was causally related to an accepted condition and/or a medical report explaining why a future surgery was necessary or recommended, the Board finds that appellant has not met his burden of proof to show that the Office abused its discretion in denying appellant reimbursement for a past surgery or authorization for a future surgical procedure.

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<sup>4</sup> 5 U.S.C. § 8103.

<sup>5</sup> *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

<sup>6</sup> *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

The November 7, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
November 5, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member