

FACTUAL HISTORY

The Office accepted that, on or before November 5, 2002, appellant, then a 39-year-old production controller, sustained bilateral plantar fasciitis due to prolonged standing at work. On July 29, 2003 she filed a claim for compensation (Form CA-7) for eight hours of sick leave used each day on November 5, 6, 7 and 8, 2002 for “foot pain” and two hours of sick leave used on February 25, 2003 for a “doctor visit.”

Appellant submitted medical evidence in support of her claim. In a February 26, 2003 report, Dr. Thomas E. Curd, an attending podiatrist, noted examining appellant on February 20, 2003. He related appellant’s account of bilateral foot pain, worse on the right beginning in November 2002. Dr. Curd diagnosed bilateral plantar fasciitis, exacerbated by weight bearing, walking, prolonged standing on concrete floor at work and wearing steel-toed safety shoes. He prescribed exercise and medication.

In an August 7, 2003 letter, the Office advised appellant of the type of additional medical and factual evidence needed to support her claim for disability. The Office noted that the July 29, 2003 claim form noted November 6, 2002 as the date of injury whereas on her initial claim form, appellant provided a date of November 5, 2002. The Office noted that appellant needed to submit sufficient medical evidence to justify changing the date of injury. The Office also noted that appellant must provide “medical evidence establishing disability for work” for the claimed periods.

In an August 25, 2003 report, Dr. Staley C. Moore, an attending Board-certified family practitioner, stated that appellant “was seen in our office November 6, 2002” for plantar fasciitis of the right foot. “Due to this condition she was out of work from November 5th through the 8th of November.”

By decision dated April 7, 2004, the Office denied appellant’s claim for disability compensation from November 5 to 8, 2002 and February 25, 2003. The Office found that Dr. Moore’s August 25, 2003 report was insufficient to meet appellant’s burden of proof as it was dated after appellant left federal employment. Also, Dr. Moore did not provide adequate medical rationale to support his retroactive determination of a period of disability.

In a September 7, 2004 letter, appellant requested reconsideration. She stated that she was “attaching supporting information regarding the leave buy back date. The correct date where [she] requested two hours [of] sick leave [was] February 20, 2003.” Appellant did not submit additional evidence.

By decision dated October 4, 2004, the Office denied reconsideration on the grounds that the evidence submitted was insufficient to require the Office to reopen the case for a merit review. The Office found that appellant’s September 7, 2004 letter did not raise substantive legal questions or include new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim, including that any specific condition or disability for which she claims wage-loss compensation is causally related to the employment injury.² Whether a particular injury or condition caused a period of disability for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.³

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained bilateral plantar fasciitis in the performance of duty on or before November 5, 2002. On July 29, 2003 she filed a claim for wage-loss compensation for November 5, 6, 7 and 8, 2002 and February 25, 2003 related to the accepted condition. The Office advised appellant by August 7, 2003 letter of the necessity of providing "medical evidence establishing disability for work" for the claimed periods.

In support of her disability claim, appellant submitted a February 26, 2003 report from Dr. Curd, an attending podiatrist, who noted examining appellant on February 20, 2003 for bilateral plantar fasciitis. He noted that appellant first experienced symptoms in November 2002. However, Dr. Curd did not indicate that appellant was disabled for work for any period. Appellant also submitted an August 25, 2003 report from Dr. Moore, an attending Board-certified family practitioner, who noted that appellant was seen on November 6, 2002 for plantar fasciitis of the right foot and that the condition kept her out of work from November 5 to 8, 2002.

As Dr. Curd and Dr. Moore did not provide medical rationale explaining how and why the accepted plantar fasciitis would disable appellant for work for the claimed periods, their opinions are insufficient to meet appellant's burden of proof.⁴ Therefore, the Board finds that the Office's April 7, 2004 decision properly denied appellant's claim for disability compensation from November 5 to 8, 2002 and on February 25, 2003.

LEGAL PRECEDENT -- ISSUE 2

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.⁵ Section 10.608(b) provides that, when an

¹ 5 U.S.C. § 8101 *et seq.*

² *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

³ *Tammy L. Medley*, 55 ECAB ____ (Docket No. 03-1861, issued December 19, 2003).

⁴ *Tammy L. Medley*, *supra* note 3.

⁵ 20 C.F.R. § 10.606(b)(2) (2003).

application for review of the merits of a claim 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.⁶ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁷

ANALYSIS -- ISSUE 2

Appellant requested reconsideration of the Office's April 7, 2004 decision by letter dated September 7, 2004. She asserted that she requested two hours of sick leave on February 20, 2003, not February 25, 2003 as set forth on her July 29, 2003 claim form. The Board notes that, while Dr. Curd noted in a February 26, 2003 report that he examined appellant on February 20, 2003, there is no evidence of record that appellant's attendance at this appointment occurred during work hours such that leave use was necessary. She did not submit any relevant and pertinent new evidence not previously considered by the Office supporting that she was disabled for work from November 5 to 8, 2002 and on February 25, 2003 due to accepted bilateral plantar fasciitis.

As appellant's September 7, 2004 letter failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office, the Office properly refused to reopen her claim for a merit review. Consequently, appellant is not entitled to a review of the merits of the claim based upon any of the above-noted requirements under 10.606(b)(2) of the Act's implementing regulations. Accordingly, the Board finds that the Office properly denied appellant's September 7, 2004 request for reconsideration.

CONCLUSION

The Board finds that appellant has not established that she was disabled for work from November 5 to 8, 2002 and on February 25, 2003 due to accepted bilateral plantar fasciitis. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.608(b) (2003).

⁷ *Annette Louise*, 54 ECAB ____ (Docket No. 03-335, issued August 26, 2003).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 4 and April 7, 2004 are hereby affirmed.

Issued: May 5, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member