

On April 8, 1994 appellant, then a 29-year-old distribution clerk, filed an occupational disease claim alleging that he developed calcaneal spur plantar fasciitis in the performance of duty. In a September 9, 1993 report, Dr. Mark Haas, a podiatrist, diagnosed classic plantar fasciitis with heel spur formation. He prescribed work boots with corrective orthotics. The

Office accepted appellant's claim for bilateral aggravation of preexisting calcaneal spur plantar fasciitis and paid appropriate compensation.

On June 19, 2003 appellant filed a claim for a recurrence of disability. The Office requested additional information concerning his claim on August 22, 2003. In an August 27, 2003 response, appellant explained that he was still experiencing discomfort in his left foot and that he had not been reimbursed for his most recently prescribed work boots.

By decision dated September 19, 2003, the Office denied appellant's recurrence of disability claim on the grounds that the evidence was insufficient to establish that his current medical condition was due to the accepted work injury. The Office did not specifically address his outstanding reimbursement request for his most recently prescribed work boots. On September 30, 2003 appellant requested an oral hearing.

Appellant continued his treatment with Dr. Haas and received a new prescription for working boots with orthotics each year. In a November 4, 2003 report, Dr. Haas diagnosed tenosynovitis of the ankle. He stated that appellant needed new work boots and was in the process of requesting authorization or reimbursement from the Office. On February 9, 2004 Dr. Haas reported that appellant had "ongoing plantar fasciitis, mid arch tenosynovitis due to his pes planovalgus foot type exacerbated by his activity level as work requirements." He noted: "[appellant] continues to be confined to shoe gear that can accommodate the orthotics, confined to the orthotics themselves. This has been an ongoing problem with him due to his congenital pes planovalgus foot type exacerbated by his work requirements." In an August 30, 2004 note, Dr. Haas reported that appellant's condition was improving and that he simply needed to continue wearing his orthotic work boots.

An oral hearing was held on February 26, 2004. Appellant stated that after his claim was accepted he continued treatment with Dr. Haas and received a yearly prescription for orthotic work boots. He explained that the Office reimbursed him for the prescribed boots until 2002, when it denied his reimbursement request because his claim had, for some reason, been closed.

By decision dated June 8, 2004, the hearing representative affirmed the denial of appellant's recurrence of disability claim. However, she added: "While I do not find that the claimant has submitted sufficient medical evidence to necessarily establish a worsening of the accepted condition, I do find that the medical evidence establishes that the claimant's current residual condition continues to be related to the accepted work injury and the case should be reopened for payment of appropriate medical benefits." The hearing representative noted that appellant's need for orthotic work boots but did not specifically address whether he should be reimbursed for the prescribed boots.

Appellant provided a November 17, 2005 prescription for corrective work boots from Dr. Haas. He purchased the prescribed work boots on the same day. Appellant also submitted a February 23, 2006 reimbursement request in the purchase amount of \$208.67, for the prescribed boots.

In an October 31, 2006 report, Dr. Haas noted that appellant had reported to his office with "an entirely new presenting complaint. Over the past four to five days without provocation,

appellant developed right heel pain consistent with plantar fasciitis, consistent with what he went through in the past with his left foot.” Dr. Haas also noted that diagnostic testing revealed a “large spur flatfoot.”

On October 31, 2006 appellant filed an occupational disease claim, alleging that he developed plantar fasciitis (heel spurs) in the performance of duty and characterizing his symptoms as similar to those in his 1994 claim. He explained that he reinjured his foot on October 29, 2006 after jumping off of a flat sorter machine. Appellant stated that his doctor had previously treated his condition with custom orthoses and fitted work boots which “seemed to control the problem” until the above incident. On January 3, 2007 the Office accepted his claim for plantar fibromatosis.¹

On January 22, 2007 appellant requested an oral hearing “on the denied reimbursement for prescribed work boots (as prescribed by my attending physician) submitted on November 17, 2005 and monthly thereafter for the amount of \$208.67. These requests have been mailed, faxed with the proper OWCP-1500 and OWCP-915 forms but to no avail.” Appellant provided an additional copy of his February 23, 2006 request for reimbursement of \$208.67 for the custom work boots prescribed on November 11, 2005. The record reflects that the request for reimbursement was faxed to the Office on multiple occasions.

By decision dated March 6, 2007, the Office denied appellant’s hearing request on the grounds that he had already received a hearing on the same issue for which a decision was issued on June 8, 2004.

LEGAL PRECEDENT

Section 8124(b)(1) of the Federal Employees’ Compensation Act provides that, before review under section 8128(a), a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.² The Office’s regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.³

Additionally, the Board has held that the Office, in its broad discretionary authority in the administration of the Act,⁴ has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary

¹ By correspondence dated January 11, 2007, the Office informed appellant that it was combining his 2006 claim, file number 162118400, with his 1994 claim, file number 160240520, and that that the two files would hence be identified as file number 160240520.

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.616(a).

⁴ 5 U.S.C. §§ 811-8193.

authority in deciding whether to grant a hearing.⁵ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of Board precedent.⁶

ANALYSIS

The Board finds that appellant was not entitled to an oral hearing as the Office had not issued a final decision on his request for reimbursement. As noted, section 8124 of the Act provides that a claimant who is not satisfied with an Office decision is entitled to a hearing as a matter of right where there has been no prior reconsideration and where the request is made within 30 days after the issuance of a decision.⁷ A final decision of the Office is thereby made a condition precedent for the right to a hearing to arise. The Board has held that the Office, in its broad discretionary authority to administer the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and has held that the Office must exercise its discretion in such cases.⁸ However, without a final decision from which appellant may seek a hearing, the Office has no discretion to exercise.⁹

Appellant requested a hearing on the issue of the "denied reimbursement" of his claim for work boots. He stated that he had repeatedly requested reimbursement for his prescribed work boots since November 17, 2005. However, the Board notes that the record does not establish that the Office ever issued a final decision on the requested reimbursement. As the Office has not issued a final decision on appellant's reimbursement request for his prescribed work boots, his request was premature.

CONCLUSION

The Board finds that appellant was not entitled to a hearing because no final decision had been issued on his claim for reimbursement for his prescribed custom work boots.

⁵ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

⁶ *Teresa M. Valle*, 57 ECAB __ (Docket No. 06-438, issued April 19, 2006). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

⁷ 5 U.S.C. § 8124(b).

⁸ See *supra* note 6.

⁹ See *Eileen A. Nelson*, 46 ECAB 377 (December 27, 1994) (holding that the Branch of Hearings and Review may not assume jurisdiction in the claims process absent a final decision).

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 4, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board