

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHING A. VELASQUEZ and U.S. POSTAL SERVICE,
POST OFFICE, Arlington Heights, Ill.

*Docket No. 96-1661; Submitted on the Record;
Issued May 20, 1998*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a recurrence of disability beginning June 24, 1994 causally related to the employment-related temporary aggravation of her bilateral arch strain of August 14, 1982.

On September 27, 1982 appellant, then a 30-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on August 14, 1982 she sustained a bilateral foot strain caused or aggravated by work factors. Dr. Richard J. La Veau, appellant's treating podiatrist, placed her on light duty on August 19, 1982 and released her to regular duty beginning the week of October 11, 1982.

In a decision dated March 23, 1984, the Office of Workers' Compensation Programs accepted appellant's claim that she sustained a temporary bilateral arch strain commencing on August 14, 1982.

In a notice of recurrence of disability and claim for compensation (Form CA-2a) dated June 24, 1994 and received by the Office on April 28, 1995, appellant alleged that in June 1994 she sustained a recurrence of disability causally related to her August 1982 employment injury.¹ Appellant stated that she broke her right foot orthotics which caused discomfort in her right foot and pain in her right lower back. She also indicated that her doctor had fitted her to a new orthotic device.

In support of her claim, appellant submitted a report from Dr. Kevin B. Zucker, her treating podiatrist, who stated in a June 15, 1994 report received by the Office on January 11, 1995, that appellant's calcaneal heel spurs and associated plantar fasciitis were being treated with custom made orthotics in lieu of heel surgery. Appellant also submitted an attending physician's report dated August 9, 1984 and received by the Office on April 5, 1995 in which Dr. La Veau

¹ Appellant indicated that her original employment injury occurred in September 1982.

stated that he had fitted appellant for balanced orthotics as a result of her acute weak foot syndrome with severe arch strain bilateral. He noted that he last treated appellant on June 21, 1984.

By letter dated August 22, 1995, the Office advised appellant that it had received her notice of recurrence of disability and advised her that if she had had a new injury, "or if anything else occurred," she should file a new notice of injury. The Office also advised her that she was required to provide evidence that established the causal relationship between her current condition and her employment injury within 30 days in order for the Office to adjudicate her claim for recurrence of disability. The Office attached a form for appellant's treating podiatrist which contained a list of issues that the doctor was required to address in a detailed medical narrative. The Office also noted that appellant's initial disability ended on October 11, 1982.

In a medical report dated September 20, 1995, Dr. Zucker stated that appellant had heel spurs and plantar fasciitis of both feet which caused chronic foot and heel pain. Dr. Zucker recommended custom molded orthotics to lessen pain and to keep her feet functioning in a normal configuration. He stated that appellant's current condition was part of a chronic long-term problem which was prone to recur, and that, although she had recovered from her initial foot injury, she would continue to need preventive treatment. Dr. Zucker noted that appellant continued to feel pain caused by wear and tear of her feet caused by excessive walking.

In a decision dated February 8, 1996, incorporating by reference a memorandum to the Director, the Office found that the evidence failed to establish that the claimed medical condition or disability was causally related to appellant's injury. In the memorandum to the Director, the Office noted that it had reviewed Dr. Zucker's June 15, 1994 and September 20, 1995 reports which it determined had failed to provide a rationalized medical opinion concerning the causal relationship between appellant's current medical condition and her employment injury.

The Board finds that appellant has not established that she sustained a recurrence of disability beginning June 24, 1994 causally related to her employment-related aggravation of her bilateral arch strain of August 14, 1982.

Following her initial injury of August 14, 1982, Dr. La Veau, her attending podiatrist, returned her to regular duty on October 11, 1994.² With respect to any disability thereafter,

² Although appellant was placed on light duty by her doctor from August 19 to October 11, 1982, she was on sick leave from August 19 to September 23, 1982 and returned to regular duty on September 27, 1982. Appellant subsequently bought back her sick leave.

appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the recurrence of a disabling condition for which she seeks compensation was causally related to her August 14, 1982 employment injury.³ As part of such burden of proof, rationalized medical evidence showing causal relation must be submitted.⁴ The fact that a condition manifests itself during a period of employment does not raise an inference of causal relationship between the two.⁵

In support of her recurrence of disability claim, appellant submitted medical reports from Dr. Zucker dated June 15, 1994 and September 20, 1995. These reports are of limited probative value because they fail to address whether any disability occurred on or after June 24, 1994, the date of the alleged recurrence of disability, and whether appellant's current condition is causally related to the previously accepted temporary bilateral arch strain appellant sustained in 1982. In his June 15, 1994, report Dr. Zucker merely stated that he was treating appellant for calcaneal heel spurs and associated plantar fasciitis but did not provide a rationalized medical opinion which would establish a causal relationship between her current condition and the employment injury. In his September 20, 1995 report, Dr. Zucker stated that the "current problem is part of the chronic long-term problem." However this conclusion that appellant had bilateral plantar fasciitis was not supported by a detailed medical narrative which the Office specifically requested. Furthermore, in response to a request to explain if the diagnosis for the current condition was the same as for the original injury, the doctor merely stated "yes" without an accompanying rationalized medical opinion in support of his conclusion. A physician's opinion on causal relationship which consists only of indicating "yes" to a question without any attendant rationale has little probative value and is insufficient to establish causal relationship.⁶ Furthermore, Dr. La Veau's medical report stated that he had fitted appellant for balanced orthotics as a result of her acute weak foot syndrome but did not submit a rationalized medical opinion to establish a causal relationship between her current condition and her original injury.⁷

Since appellant bears the burden of establishing that the condition and disability for which compensation is claimed are due to the August 14, 1982 accepted employment injury,⁸ the Office properly denied appellant's claim for compensation which was predicated upon a recurrence of disability causally related to her employment-related temporary aggravation of her bilateral arch strain on August 14, 1982.

³ *Barbara J. Williams*, 40 ECAB 649 (1989); *James A. Long*, 40 ECAB 538 (1989).

⁴ *Id.*

⁵ *Id.*

⁶ *See Ruth S. Johnson*, 46 ECAB 237 (1994).

⁷ The record reflects that appellant sought reconsideration before the Office on May 6, 1996, two days prior to the date the Board received her appeal. It is well established that the Board and the Office may not simultaneously have jurisdiction over the same issue in the same case. Consequently, the Office did not have jurisdiction over appellant's request for reconsideration during the pendency of this appeal. *Russell E. Lerman*, 43 ECAB 770, 772 (1992); *Jerald H. Miller*, 33 ECAB 2007, 2009-10 (1982).

⁸ *See Clifford C. Hall*, 6 ECAB 509, 510 (1954).

The decision of the Office of Workers' Compensation Programs dated February 8, 1996 is hereby affirmed.

Dated, Washington, D.C.
May 20, 1998

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member