

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARENCE E. SCHUELER and DEPARTMENT OF THE ARMY,
Fort Leonard Wood, Mo.

*Docket No. 97-231; Submitted on the Record;
Issued September 17, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained a left foot injury causally related to his federal employment.

In the present case, appellant, an automotive mechanic, filed a claim on December 13, 1995 alleging that he sustained a blister on his left foot causally related to his federal employment. The record indicates that appellant underwent surgery on February 2, 1996, involving amputation of the left leg below the knee. By decision dated March 3, 1996, the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had not established an injury causally related to his federal employment. In a decision dated May 28, 1996, the Office reviewed the case on its merits and denied modification of its prior decision. By decision dated August 21, 1996, the Office again reviewed the case on its merits and denied modification of the prior decisions.

The Board has reviewed the record and finds that the case is not in posture for decision due to a conflict in the medical evidence.

In this case, appellant has alleged that the wearing of steel-toed work shoes caused injury to his left foot, which eventually led to surgery requiring amputation of the left leg below the knee. In support of his claim, appellant submitted a June 18, 1996 report from Dr. Randall D. Smith, a specialist in physical medicine. Dr. Smith stated that constant and repeated pressure throughout the day had caused tissue damage in the left great toe, which extended from the surface of the skin to the bone. He indicated that the steel toed work shoes were the most likely candidate, because of the hard and unforgiving surface. Dr. Smith noted that appellant had diabetes mellitus, and therefore could not feel the sore developing on his left great toe. According to Dr. Smith, the damaged tissue began to swell and a blister formed, and when the blister came open the tissue was already dead to the bone, thus an infection was inevitable. Dr. Smith further stated that the infection spread to the entire foot causing a cellulitis. He concluded, "Put simply, constant pressure to the inside of the great toe caused tissue damage.

Bacteria grew in the dead tissue and spread into [appellant's] foot leading to the below the knee amputation. The steel-toed shoes are the most likely cause of this injury. There is no other possible etiology that is more likely to have occurred.”

The Office then referred the case record to an Office medical adviser for evaluation. In a report dated July 8, 1996, the Office medical adviser opined that the left great toe blister with subsequent cellulitis and gangrene was not causally related to appellant's federal employment. The medical adviser noted that appellant had worn the shoes for more than a year prior to the development of the blister, which did not indicate that the shoes were poorly fitted, and that when appellant reportedly discovered the blood blister on November 25, 1995, he had not worn the shoes for several days. The medical adviser opined that the left great toe ulceration was due to infection penetrating into the soft tissue at the time the blood blister was lanced, and that the steel-toed shoes had nothing to do with the development of the ulceration.

Section 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.¹ In this case, the record indicates a conflict in the medical evidence between Dr. Smith and the Office medical adviser as to whether the wearing of work shoes caused or contributed to appellant's left great toe injury and subsequent left leg amputation below the knee. The Office should prepare a statement of accepted facts and refer appellant, along with medical records, to an appropriate specialist for resolution of the conflict. After such further development as the Office deems necessary, it should issue an appropriate decision.

¹ *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

The decisions of the Office of Workers' Compensation Programs dated August 21, May 28 and March 3, 1996 are set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
September 17, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member