

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD J. O'BRIEN and DEPARTMENT OF AGRICULTURE,  
U.S. FOREST SERVICE, LESTER CREEK WORK CENTER, Mountain Home, ID

*Docket No. 98-947; Submitted on the Record;  
Issued November 16, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant established that his right ankle condition was causally related to his employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On July 19, 1994 appellant, then a 29-year-old forestry technician, was walking through logging debris when his right leg slipped through some of the debris and he twisted his right ankle. The Office accepted appellant's claim for a right ankle sprain. On November 1, 1996 appellant filed a claim for an occupational injury. He stated that his right ankle had remained painful since the July 19, 1994 employment injury. In a January 28, 1997 letter, the Office informed appellant that it would develop the occupational injury claim for the period beginning in June 1995 as it considered his original sprain to have resolved by that time based on the medical evidence of record. In a March 3, 1997 decision, the Office denied appellant's claim on the grounds that he had not established that he had sustained an injury as alleged. In an undated letter, appellant requested reconsideration. In a December 15, 1997 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was immaterial and, therefore, insufficient to warrant review of the prior decision.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an occupational injury to his right ankle.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;<sup>1</sup> (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>2</sup> and (3) medical evidence establishing that

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<sup>1</sup> See *Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>2</sup> See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>3</sup> The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>4</sup> must be one of reasonable medical certainty,<sup>5</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup>

The Office informed appellant that, to meet his burden of proof, he had to describe the activities of his job, which he believed was causing his condition and had to submit a narrative medical report, which provided a firm diagnosis of his current ankle condition, identify the activities related to the ankle condition and provide a rationalized opinion on the relationship between the activities and the diagnosis of the condition. Appellant did not submit a description of his job activities which he believed caused his condition. The only medical information submitted were medical treatment notes for the period April 17 through June 19, 1995 that were not signed by a physician. The unsigned medical notes cannot be considered competent medical evidence.<sup>7</sup> Appellant, therefore, did not submit the factual nor medical evidence necessary to sustain his burden of proof.

The Board further finds that the Office properly denied appellant's request for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>8</sup> Evidence that repeats or duplicates evidence already in the case record has no

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<sup>3</sup> See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

<sup>4</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>5</sup> See *Morris Scanlon*, 11 ECAB 384-85 (1960).

<sup>6</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>7</sup> *Diane Williams*, 47 ECAB 613 (1996).

<sup>8</sup> 20 C.F.R. § 10.138(b)(2).

evidentiary value and does not constitute a basis for reopening a case.<sup>9</sup> Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>10</sup>

In his request for reconsideration, appellant again submitted a series of medical treatment notes, this time for the period August 31, 1994 through October 31, 1996. However, these medical notes also were not signed by a physician. The notes, therefore, are not competent medical evidence and are immaterial to establishing appellant's burden of proof. Appellant also submitted a September 12, 1997 report from Dr. James M. Johnston, a Board-certified orthopedic surgeon, who diagnosed chronic synovitis due to mild degenerative changes in the right ankle. However, Dr. Johnston did not give an opinion on the cause of appellant's right ankle condition. His report, therefore, is irrelevant to the issue of whether appellant's right ankle condition was causally related to factors of his employment. Appellant also submitted a statement that his duties required him to walk up steep and unstable slopes which affected his ankle condition. His supervisor indicated in a September 22, 1997 statement that he concurred in appellant's description of his duties. This statement, however, is irrelevant to the issue of whether these duties caused appellant's occupational injury. Appellant, therefore, has not submitted any evidence that would require the Office to reopen his case for a review of the merits of his claim.

The decisions of the Office of Workers' Compensation Programs, dated December 15 and March 3, 1997, are hereby affirmed.

Dated, Washington, D.C.  
November 16, 1999

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

<sup>10</sup> *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).