

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THOMAS BUTLER and DEPARTMENT OF THE NAVY,  
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 01-1488; Submitted on the Record;  
Issued February 22, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs, in its May 14, 2001 decision, abused its discretion by refusing to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On June 26, 1999 appellant, then a 64-year-old marine machinery mechanic, filed a notice of occupational disease claiming that he sustained a limb threatening infection in his left foot related to his federal employment. He claimed that he originally injured both feet when he came in contact with live coral during a tour of duty in Hawaii from June to August 1998 and that in November 1998, while in San Diego, he aggravated his condition when a heavy valve fell on his left foot.

Appellant submitted a report from Dr. Robert J. Vallone, a podiatrist, dated February 5, 1999, in which he stated that appellant sustained a limb threatening infection of his left foot during his temporary employment assignment in San Diego. Dr. Vallone indicated that appellant was hospitalized and underwent several surgeries, eventually undergoing amputation of the second digit of his left foot.

In a personal statement dated August 18, 1999, appellant stated that he had come into contact with the live coral in Hawaii during his "off-duty activities." He indicated that during that time he was also exposed to coral formations and scale when he was assigned to inspect and repair main sea water systems on a submarine. He then stated that on November 19, 1998, while at work, he dropped a heavy valve on his left foot which aggravated his previous condition and led to a serious infection and the amputation of his toe.

Appellant's claim was denied on November 5, 1999 since he did not establish that he was injured in the performance of duty.

Appellant requested an oral hearing which was held on June 27, 2000.<sup>1</sup>

By decision dated August 30, 2000, the hearing representative affirmed the Office's November 5, 1999 decision.

By letter dated April 12, 2001, appellant requested reconsideration and submitted a statement from his representative and a personal statement from his supervisor, Carl Forstrom.

By decision dated May 14, 2001, appellant's request for reconsideration was denied.

The Board finds that this case is not in posture for decision and must be remanded for further evidentiary development.

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>2</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>3</sup>

The medical evidence required to establish a causal relationship 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, must be one of reasonable medical certainty 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>4</sup>

In this case, the Office does not dispute that the injury occurred as alleged. The record establishes that appellant was injured at work on November 19, 1998 when he dropped a 60- to 70-pound valve on his left foot. At the oral hearing appellant testified that he reported the incident to his foreman but was able to continue working until his foot became very painful and swollen approximately two days later. Appellant's supervisor stated that he noticed that appellant was having difficulty walking approximately one week before Thanksgiving and that he was hospitalized soon thereafter.

It is also well established that when a factor of employment aggravates, accelerates or otherwise combines with a preexisting, nonoccupational pathology, the employee is entitled to

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<sup>1</sup> The hearing representative determined that appellant should have filed a CA-1 instead of a CA-2 and stated that he would keep the record open for 30 days.

<sup>2</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>3</sup> *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

<sup>4</sup> *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

compensation. Further, it is not necessary to prove a significant contribution of employment factors to a condition for the purpose of establishing causal relationship.<sup>5</sup>

In a report dated February 5, 1999, Dr. Vallone stated that appellant presented to the emergency room on November 25, 1998 with a severe left foot infection which originated during his temporary-duty assignment in San Diego. While Dr. Vallone's report is insufficient to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that the dropping of the valve on his foot caused or aggravated his previous foot infection, it constitutes sufficient evidence in support of appellant's claim to require further development of the record by the Office.<sup>6</sup>

The Board notes that it is of no consequence that appellant's original injury may or may not have been sustained in the performance of duty, as long as appellant can establish that the dropping of the valve on his foot on November 19, 1998 aggravated a preexisting condition and occurred in the performance of duty.

The August 30, 2000 decision of the Office of Workers' Compensation Programs is hereby remanded for further proceedings consistent with this decision of the Board.<sup>7</sup>

Dated, Washington, DC  
February 22, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>5</sup> *Kathleen M. Fava (John F. Malley)*, 49 ECAB 519 (1998).

<sup>6</sup> *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>7</sup> The second issue of reconsideration is moot since the case is being remanded to the Office for a full merit review.