

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANN M. CHICKERING and U.S. POSTAL SERVICE,  
POST OFFICE, Tulsa, OK

*Docket No. 01-895; Submitted on the Record;  
Issued June 19, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs, by its decision dated October 27, 2000, abused its discretion in refusing to reopen appellant's claim for merit review pursuant to 5 U.S.C. § 8128(a).

On November 20, 1995 appellant, then a 43-year-old city carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she sustained bursitis in her right heel, plantar fasciitis in her left foot and acute plantar fasciitis in her right foot as a result of excessive standing and walking as part of her federal employment. By letter dated February 27, 1996, the Office accepted appellant's claim for aggravation of plantar fasciitis in the right foot.

On July 14, 1999 appellant filed a notice of recurrence alleging that a recurrence occurred on April 8, 1996. In a decision dated October 1, 1999, the Office denied appellant's claim, finding that the evidence failed to establish that appellant's recurrence was causally related to the approved injury.

By letter dated August 22, 2000, appellant requested reconsideration.

On September 5, 2000 appellant submitted, *inter alia*, a March 27, 2000 opinion by Dr. John E. Morehead, a physician of podiatric medicine and appellant's treating physician, wherein he noted that appellant's condition "appears to be caused by extensive walking and standing on the job." He also noted:

"[Appellant's] original condition of plantar fasciitis was caused by the requirements of her job as a city carrier for the [employing establishment]. The recurrence of this condition on or about May 14, 1996 and continuing through June 23, 1998 was, in my professional opinion, caused by the nature of her work."

At the same time, appellant submitted supporting medical notes and work tolerance limitations by Dr. Morehead and a May 18, 2000 medical opinion by Dr. R. Mark Sears, a Board-certified internist, wherein he indicated that he was of the opinion that appellant suffered from carpal tunnel syndrome and plantar fasciitis. With regard to causation, Dr. Sears continued:

“There is no question in my mind that this is work related as it clearly becomes worse with repetitive hand movements and extensive standing and walking involved in casing and carrying mail. Conversely, [appellant] consistently shows improvement of all symptoms when off work, *i.e.*, vacations, sick leave, suspensions and leave without pay. This improvement has allowed her to stop wearing orthotics, reduce splint usage to eight hours a daily (while sleeping) and to halt pain and anti-inflammatory medications. This tends to support her claim that work has caused a recurrence of the carpal tunnel syndrome and plantar fasciitis.”

He further stated that he concurred with the findings of Drs. Thompson and Morehead that both appellant’s carpal tunnel syndrome and her plantar fasciitis were proximately caused and continue to be aggravated by the requirements of her job. Progress notes by Dr. Sears were also submitted.

In a decision dated October 27, 2000, the Office denied appellant’s request for reconsideration, as it found that appellant neither raised substantive legal questions nor included new and relevant evidence in support of her request for reconsideration. The Office made no mention of the evidence submitted by appellant on September 5, 2000.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,<sup>1</sup> the Office regulations provide that a claimant may obtain review of the merits of the claim by submitting evidence or argument that: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>2</sup>

The Board finds that the Office’s refusal to reopen appellant’s case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

In support of her request for reconsideration, appellant submitted pertinent new evidence not previously considered by the Office. The merit issue in this case concerned whether appellant’s recurrence was causally related to her approved injury. On reconsideration, appellant submitted a medical opinion by Dr. Sears, wherein he indicated that appellant suffered from carpal tunnel syndrome and plantar fasciitis causally related to her work. Furthermore, appellant

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<sup>1</sup> 5 U.S.C. § 8128(a).

<sup>2</sup> 20 C.F.R. § 10.606(b)(2); *see also Jacqueline M. Nixon-Steward*, 52 ECAB \_\_ (Docket No. 99-1345, issued November 3, 2000). Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.

submitted a medical report by Dr. Morehead, who also noted that appellant's original condition of plantar fasciitis was caused by the requirements of her job and that her recurrence was also caused by the nature of her work. These reports were relevant to the pertinent issue.

As appellant has met the requirement of section 10.606(b)(2)(iii) that she submit relevant and pertinent new evidence not previously considered by the Office, the Office abused its discretion in this case by denying merit review. On remand, the Office shall grant a merit review of the medical evidence as necessary and issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated October 27, 2000 is hereby set aside and this case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, DC  
June 19, 2002

Alec J. Koromilas  
Member

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member