

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WESLEY L. MANN and U.S. POSTAL SERVICE,
POST OFFICE, San Diego, CA

*Docket No. 03-1167; Submitted on the Record;
Issued August 18, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that employment factors caused his diagnosed conditions of plantar fasciitis, patellofemoral syndrome and hyperpronation; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's claim for further reconsideration of the merits constituted an abuse of discretion.

On December 10, 2002 appellant, then a 49-year-old clerk, filed an occupational claim, alleging that he had plantar fasciitis and patellofemoral syndrome since September 15, 1999. The Office accepted appellant's claim, No. 12-2013150, for bilateral knee strain arising from a September 15, 1999 incident at work. Appellant stated that the condition was ongoing due to his walking to get his mail. He also stated that his condition was aggravated due to incorrect diagnosis and treatment. Appellant stated that the plantar fasciitis or flat feet was what had caused his knee problems "all along." Appellant's supervisor stated that appellant had no new duties for years and that he was working on a limited-duty status, sitting on a rehabilitation chair and working at a rehabilitation case.

Appellant submitted reports dated October 22 and November 12, 2002 from his treating physician, Dr. Clifford G. Feaver, a podiatrist. In Dr. Feaver's October 22, 2002 report, he stated that appellant complained of pain in both knees, the left heel and ankles. He stated that appellant's job was primarily sedentary at this time. Dr. Feaver performed a physical examination and diagnosed patellofemoral dysfunction, plantar fasciitis and hyperpronation. In his November 12, 2002 report, Dr. Feaver stated that appellant continued to have bilateral knee and leg pain, performed a physical examination and diagnosed plantar fasciitis. Appellant also submitted a disability note dated November 12, 2002 from Dr. Feaver, in which he stated that appellant required limited duty.

By letter dated December 23, 2002, the Office informed appellant that additional evidence was required including a description of the employment-related activities which contributed to his condition and a comprehensive medical report from his treating physician explaining how such exposure or incidents contributed to his condition.

In a report dated December 6, 2002, Dr. Feaver stated that appellant had significant improvement regarding the right heel pain following a corticosteroid injection for plantar fasciitis, although he stated that appellant still had pain on the left. He stated that appellant inquired about his condition being a workers' compensation claim as he had these symptoms for two years and was diagnosed as having patellofemoral syndrome. Dr. Feaver stated that he concurred with this diagnosis as being a continuing condition. He stated that appellant did have foot pain at the time of the workers' compensation evaluation and was diagnosed as having flat feet but was uncertain whether the claim was still open. Dr. Feaver performed a physical examination and reiterated his diagnoses in his October 22, 2002 report, noting that appellant's plantar fasciitis had improved.

By decision dated February 3, 2003, the Office denied appellant's claim, stating that he failed to establish a causal relationship between the diagnosed conditions and new work factors since his previous claim. The Office noted that appellant's previous claim, No. 12-2012150, for bilateral knee strain was currently closed.

By letter dated February 14, 2003, appellant requested reconsideration of the Office's decision and submitted a duty status report from Dr. Feaver dated January 2, 2003, which stated that he had plantar fasciitis and patellofemoral syndrome and required restrictions on standing, walking, bending, climbing and kneeling. It referred to the date of injury being September 15, 1999. In his request, appellant stated that his condition was not properly diagnosed and the Office closed his claim without telling him.

By letter dated February 28, 2003, the Office denied appellant's request for reconsideration.

The Board finds that appellant failed to establish a causal relationship between the diagnosed condition of plantar fasciitis, patellofemoral syndrome and hyperpronation and new work factors.

To establish that an injury was sustained in the performance of duty, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition; and (3) medical evidence establishing that 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 claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical 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 appellant'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 appellant.¹

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.²

In this case, in his December 6, 2002 report, appellant's treating physician, Dr. Feaver diagnosed improved plantar fasciitis, hyperpronation and patellofemoral dysfunction and stated that he believed these conditions continued from appellant's condition two years ago. The other reports from Dr. Feaver dated October 22 and November 12, 2002 and the November 12, 2002 do not address the cause of appellant's knee condition or how it related to its employment. Appellant did not submit any evidence showing that the conditions diagnosed by Dr. Feaver constituted an injury resulting from factors of his employment or his prior accepted injury.³

The Board finds that the Office properly refused to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (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.⁴ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).⁵

Dr. Feaver's January 2, 2003 report, which appellant submitted in support of his request for reconsideration is not relevant to appellant's claim. Dr. Feaver diagnosed plantar fasciitis and patellofemoral syndrome and indicated that appellant required work restrictions based on appellant's September 15, 1999 employment injury. He did not address how appellant's symptoms resulted from a new injury at work. Appellant has not presented evidence to show that his condition was not properly diagnosed as contended in his request. He, therefore, has not shown that the Office erroneously applied or interpreted a specific point of law or advanced a relevant legal argument or submitted relevant and pertinent new evidence not previously

¹ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

² *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

³ To the extent appellant alleged that his current condition is a worsening of the previously accepted claim of bilateral knee strain, appellant could file for a recurrence of disability. See 20 C.F.R. § 10.104.

⁴ Section 10.606(b)(2)(i-iii).

⁵ Section 10.608(a).

considered by the Office. Appellant has failed to establish his claim and the Office properly denied his request for reconsideration.

The February 3 and 28, 2003 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
August 18, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member