U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDGAR A. FIGUEIREDO and DEPARTMENT OF COMMERCE, NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION, Seattle, WA

Docket No. 03-206; Submitted on the Record;
Issued March 4, 2003

DECISION and ORDER

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

The issues are: (1) whether appellant has established a bilateral foot condition as causally related to his federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record.

On February 13, 2002 appellant, then a 47-year-old engineer, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that his plantar fascitis was causally related to his federal employment. Appellant indicated on the claim form that he worked on hard surfaces. By letter dated February 26, 2002, the Office requested that appellant submit additional factual and medical evidence.

In a decision dated March 29, 2002, the Office denied the claim. By decision dated June 25, 2002, the Branch of Hearings and Review denied appellant's request for a review of the written record. The Branch of Hearings and Review indicated that appellant's request was untimely, and therefore he was not entitled to a review of the written record as a matter of right; the Branch of Hearings and Review further denied the request on the grounds that the issue could equally well be addressed by submission of additional relevant evidence pursuant to a reconsideration request.

The Board finds that appellant has not established a foot condition causally related to his federal employment.

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; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or 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 the claimant.[1] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and her federal employment.[2] Neither the fact that the condition became manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by his federal employment, is sufficient to establish causal relation.[3]

On this appeal, the Board may review only evidence that was before the Office at the time of the March 29, 2002 decision.[4] Appellant did not submit a detailed statement describing the work activities he believed contributed to his foot condition, nor did he provide probative medical evidence on causal relationship between the identified work activities and a diagnosed foot condition. The medical evidence included a note dated February 5, 2002 from Dr. Daniel Wendt, a podiatrist, stating that appellant had a foot injury and should limit weight-bearing activity. Dr. Wendt did not provide a history, diagnosis, or a reasoned medical opinion on causal relationship with federal employment. The Board accordingly finds that appellant did not submit sufficient evidence to meet his burden of proof in this case.

The Board further finds that the Office properly denied appellant's request for a review of the written record.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[5] Section 10.615 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.[6] The request "must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought."[7]

In the present case, appellant's request for a review of the written record was postmarked May 18, 2002. Since this is more than 30 days after the March 29, 2002 Office decision, appellant is not entitled to a review of the written record as a matter of right.

[1] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[2] *See Walter D. Morehead*, 31 ECAB 188 (1979).

[3] *Manuel Garcia*, 37 ECAB 767 (1986).

[4] *See* 20 C.F.R. § 501.2(c).

[5] 5 U.S.C. § 8124(b)(1).

[6] 20 C.F.R. § 10.615.

[7] 20 C.F.R. § 10.616(a).

Although appellant's request for a review of the written record was untimely, the Office has discretionary authority with respect to granting the request and the Office must exercise such discretion.[8] In this case, the Office advised appellant that the issue could be addressed through the reconsideration process and the submission of new evidence. This is considered a proper exercise of the Office's discretionary authority.[9] There is no evidence of an abuse of discretion in this case.

The decisions of the Office of Workers' Compensation Programs dated June 25 and March 29, 2002 are affirmed.

Dated, Washington, DC
March 4, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

[8] *See Cora L. Falcon*, 43 ECAB 915 (1992).

[9] *Id.*