

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALYCE F. DAVIS and U.S. POSTAL SERVICE,  
BULK MAIL CENTER, Atlanta, GA

*Docket No. 03-1162; Submitted on the Record;  
Issued September 24, 2003*

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DECISION and ORDER

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

The issues are: (1) whether appellant established that her right lower extremity condition was causally related to an August 17, 2002 employment incident; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for review of the written record.

On August 17, 2002 appellant, then a 40-year-old clerk, filed a traumatic injury claim alleging that she injured her right foot and leg when she moved a mail sack earlier that day. Appellant stopped work on August 18, 2002.

Appellant submitted August 17, 2002 clinic notes from Dr. Fredric C. Glass, Board-certified in preventative medicine, who indicated that appellant was treated for plantar inflammation of the right foot and a right calf strain with no evidence of a fracture of the right foot. He noted that there was no definitive history of trauma and that appellant suspected the pain was from working on the hard floor. He also noted that appellant stated that she may have pulled something while lifting sacks. Dr. Glass advised that appellant should not work the remainder of the day and that she could perform modified duty effective August 18, 2002. Appellant also submitted treatment records from Kaiser Permanente dated August 17 and 23, 2002. The records included information regarding plantar fasciitis and the examining physicians stated that appellant was unable to work. Although the August 17, 2002 treatment records indicated that appellant was able to resume work effective August 23, 2002, when appellant was seen that same day her anticipated date of return to work was changed to August 28, 2002.

In a letter dated September 9, 2002, the Office advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant submitted additional medical records from Kaiser Permanente dated August 17 and September 3, 2002. The August 17, 2002 after-hours discharge summary included a diagnosis of plantar fasciitis. Appellant was advised to rest, apply ice and use heel pads. The September 3, 2002 treatment verification record indicated that appellant was seen that day and was able to resume work on September 4, 2002. The Office also received a September 7, 2002 “COP [continuation of pay]/RTW [return to work]” worksheet prepared by a nurse, who indicated that appellant could return to her regular duties on September 6, 2002.

By decision dated October 8, 2002, the Office denied appellant’s claim on the grounds that the medical evidence was not sufficient to establish that her condition was caused by the August 17, 2002 employment incident.

Appellant requested a review of the written record by letter dated January 6, 2003 and postmarked January 7, 2003.

In a decision dated March 5, 2003, the Office denied appellant’s request for a review of the written record. The Office found that the request was not timely filed. Appellant was informed that her case had been considered in relation to the issues involved and that the request was further denied for the reason that the issues in the case could be equally well addressed by requesting reconsideration and submitting evidence not previously considered regarding the causal relationship between her claimed condition and her employment.

The Board finds that appellant failed to establish that her right leg condition was causally related to her August 17, 2002 employment incident.

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>1</sup>

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether “fact of injury” has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.<sup>2</sup> The second component is whether the employment incident caused a personal injury.<sup>3</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is

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<sup>1</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>2</sup> *Id.*

<sup>3</sup> *John J. Carlone*, 41 ECAB 354 (1989).

sufficient to establish causal relationship.<sup>4</sup> Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>5</sup>

In the instant case, the medical evidence does not establish a causal relationship between appellant's right plantar fasciitis and calf strain and the August 17, 2002 employment incident. Dr. Glass' August 17, 2002 report is the only medical evidence to address appellant's employment. However, Dr. Glass did not attribute appellant's condition to her employment. He noted that there was no definitive history of trauma and that appellant suspected that the pain she experienced was due to working on the hard floor. Dr. Glass also reported appellant's statement that she may have pulled something while lifting sacks. Other than noting appellant's beliefs regarding the possible cause of her injury, Dr. Glass did not provide a definite opinion regarding the etiology of appellant's right plantar fasciitis and calf strain. As the record is devoid of any rationalized medical evidence specifically attributing appellant's diagnosed condition to her employment on August 17, 2002, the Office properly denied appellant's claim.

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

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought.<sup>6</sup> However, the Office has discretion to grant or deny a request that was made after this 30-day period.<sup>7</sup> In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.<sup>8</sup>

Appellant's request for a review of the written record was postmarked January 7, 2003, which is more than 30 days after the Office's October 8, 2002 decision. As such, appellant is not entitled to a hearing as a matter of right. Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant that the issue of whether her claimed condition was causally related to her employment could equally well be addressed by requesting

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<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, *supra* note 4. Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id.*

<sup>6</sup> 20 C.F.R. § 10.616(a) (1999).

<sup>7</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>8</sup> *Rudolph Bermann*, 26 ECAB 354 (1975).

reconsideration.<sup>9</sup> Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for a review of the written record.

The decisions of the Office of Workers' Compensation Programs dated March 5, 2003 and October 8, 2002 are hereby affirmed.

Dated, Washington, DC  
September 24, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).