United States Department of Labor
Employees' Compensation Appeals Board

LISA L. BLACKBURN, Appellant **and** **U.S. POSTAL SERVICE, POST OFFICE, Cincinnati, OH, Employer**	)	**Docket No. 04-586** **Issued: May 4, 2004**

Appearances:
Lisa L. Blackburn, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 29, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 22 2003 denial of reconsideration and September 18, 2003 denial of her claim. Under 20 C.F.R §§ 501(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that she sustained an injury to her left great toe while in the performance of duty on August 1, 2003; and (2) whether the Office properly refused to reopen appellant's case for reconsideration of her claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

On August 3, 2003 appellant, a 33-year-old postal clerk, filed a traumatic injury claim alleging that she fractured the great toe of her left foot on August 1, 2003 when she closed a gate on her left foot. She submitted treatment notes dated August 1 and 4, 2003 from Dr. Steven A. Goldfarb, a Board-certified orthopedic surgeon, who found that she sustained a fractured great left

toe on August 1, 2003.[1] In the treatment note dated August 1, 2003, Dr. Goldfarb checked a box indicating that the diagnosed condition, fractured great left toe, was causally related to the alleged employment injury.

On August 12, 2003 the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked her to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition and an opinion as to whether her claimed condition was causally related to her federal employment. The Office requested that appellant submit the additional evidence within 30 days.

By decision dated September 18, 2003, the Office denied appellant's claim, finding that she failed to submit sufficient medical evidence in support of her claim.

On September 30, 2003 appellant requested reconsideration and submitted a September 22, 2003 report from Dr. Goldfarb, who stated: "[Appellant] is here for follow-up of her great toe fracture of the left foot. She has no significant swelling. [Appellant] still has some slight decreased range of motion of the [interphalangeal] IP joint of her great toe."

Dr. Goldfarb noted that radiograph results indicated that appellant essentially had a healed proximal phalanx fracture of the great toe. He advised that he would allow her to return to activities gradually.

By decision dated October 22, 2003, the Office denied appellant's application for review on the ground that it neither raised substantive legal questions, nor included new and relevant evidence sufficient to require the Office to review the September 18, 2003 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

[1] One of the treatment notes appellant submitted was not legible.

[2] 5 U.S.C. § 8101-8193.

[3] *Joe D. Cameron,* 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

To determine whether a federal 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.[5] 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.[6] The medical evidence required to establish causal relationship is usually 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 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.[7]

ANALYSIS -- ISSUE 1

It is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established by medical evidence.[8] Appellant has not submitted sufficient probative medical evidence to establish that the employment incident on August 1, 2003 caused a personal injury and resultant disability.

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 sufficient to establish causal relationship.[9] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

The medical evidence submitted consists of the reports from Dr. Goldfarb, who stated findings on examination and indicated that appellant had a fractured great left toe. However, he did not provide an opinion which related this diagnosis to the August 1, 2003 work injury. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[10] Although Dr. Goldfarb did present a diagnosis of appellant's condition, he did not address whether this condition was causally related to the August 1, 2003 employment injury. There is no indication in the record, therefore, that this

[5] *John J. Carlone,* 41 ECAB 354 (1989).

[6] *Id.* For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(14).

[7] *Id.*

[8] *John J. Carlone*, *supra* note 5.

[9] *Id.*

[10] *See Anna C. Leanza*, 48 ECAB 115 (1996).

injury was work related. Dr. Goldfarb failed to provide a rationalized, probative medical opinion relating appellant's current condition to any factors of her employment. The August 1, 2003 form report from Dr. Goldfarb which provided a checkmark in support of causal relationship is insufficient to establish the claim. The Board has held that without further explanation or rationale, a checked box is insufficient to establish causation.[11]

The Office advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Accordingly, as appellant has failed to submit any probative medical evidence establishing that she sustained a fracture left great toe injury in the performance of duty, the Office properly denied appellant's claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.[12] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[13]

ANALYSIS -- ISSUE 2

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted is not pertinent to the issue on appeal. The September 22, 2003 report from Dr. Goldfarb addressed findings on examination and stated that radiograph results revealed a healed proximal phalanx fracture of the great toe. He recommended her eventual return to work on a gradual basis. The report, however, did not address the relevant issue of causal relationship. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[14] Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

[11] *Debra S. King,* 44 ECAB 203 (1992); *Salvatore Dante Roscello,* 31 ECAB 247 (1979).

[12] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

[13] *Howard A. Williams,* 45 ECAB 853 (1994).

[14] *See David J. McDonald*, 50 ECAB 185 (1998).

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury to her left great toe in the performance of duty on August 1, 2003. The Office properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the October 22 and September 18, 2003 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: May 4, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member