United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 06-1786**
	)	**Issued: November 13, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Cincinnati, OH, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 31, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated December 27, 2005, January 11 and April 3, 2006 denying his claim for compensation, and a July 6, 2006 decision denying reconsideration of the merits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2) the Board has jurisdiction over the merits and nonmerits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury on November 2, 2005 in the performance of duty; and (2) whether the Office properly denied his request for reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 13, 2005 appellant, then a 52-year-old mail handler, filed a traumatic injury claim alleging that on November 2, 2005 he sustained a stress fracture of the left foot as a result of pushing and pulling heavy containers into dumpers. The employing establishment

controverted the claim. Appellant submitted a November 7, 2005 note from Dr. V. James Sammarco, a Board-certified orthopedic surgeon, who indicated that appellant was able to return to work, sedentary duty only, on November 8, 2005.

By letter dated November 23, 2005 the Office requested that appellant submit further information. In response, appellant submitted a December 14, 2005 report from Dr. G. James Sammarco, a Board-certified orthopedic surgeon, who stated:

> "The medical records indicate that you sustained an injury on November 2, 2005 but that the pain began on October 4, 2005. Walking tended to exaggerate the pain and the pain had been present for approximately three weeks. Pain was located in the left foot and was rated five out of ten in its intensity when most severe and one out of ten when not ambulating. Past history included you have had a kidney transplant for kidney disease and you have been treated previously by our office, November 17, 1995. At that time a history of hyperuricemia and sensory neuropathy was diagnosed. Past surgery on the left foot performed on June 20, 1996 indicated a synovectomy and excision of gouty typhous, resection of bony mass in the proximal in the proximal halluceal phalanx. You were last seen in this office for that condition on November 8, 2002.
>
> "X-rays taken on November 7, 2005 indicated a diagnosis of a fracture of the second metatarsal. Findings and symptoms which support this condition included a history of neuropathy, standing and walking during the eight-hour day with insidious increase in pain in the left foot, terminating in a sudden onset of acute pain in the second metatarsal, all of which were confirmed by x-rays indicating a metatarsal fracture without significant trauma.
>
> "Treatment provided included orthotics, use of crutches and restriction to sedentary work beginning on November 7, 2005. Work restriction, when seen on November 7, 2005, was to be extended to January 2, 2006 after which time it is estimated you would be able to return to regular duty. Prognosis currently is good inasmuch as you have underlying gout, peripheral neuropathy, kidney transplant with appropriate medications to support that.
>
> "It is my professional opinion that the condition for which you have been diagnosed was aggravated by your claimed injury. It is my professional opinion that incidents in your federal employment contributed to your condition by the prolonged standing and pushing of heavy materials."

By decision dated December 27, 2005, the Office denied appellant's claim for the reason that the medical evidence was insufficient to establish that the incident occurred as alleged. The Office also found that the medical evidence did not relate the diagnosis to the claimed incident.

On January 3, 2006 appellant requested reconsideration. He contended that the Office did not consider the December 14, 2005 report by Dr. Sammarco in making its decision. He

submitted a January 4, 2006 note from Dr. G. James Sammarco indicating that he could return to sedentary work on January 4 until March 1, 2006.

By decision dated January 11, 2006, the Office found that appellant had now established the alleged incident. However, he did not establish causal relationship between the fracture of the second metatarsal and the November 2, 2005 incident. The Office pointed out that the alleged injury was more "indicative of an occupational-based injury over a period of time and not from a single traumatic incident."

On February 11, 2006 appellant requested reconsideration. He submitted a January 27, 2006 report by Dr. G. James Sammarco, who stated:

> "Although there is no specific notation that the stress fracture occurred at a specific place or time on Monday, October 4, 2005, the nature of a stress fracture itself is, in fact, a condition of overuse involving repetition of a weight bearing activity which would include standing at work. Accordingly, it is my professional opinion that standing activities during [appellant's] employment contributed at least in part to the development of his stress fracture."

In a November 23, 2005 note, Dr. G. James Sammarco indicated that appellant's date of injury was November 2, 2005. He advised that appellant was using crutches and was restricted from regular duty until January 2, 2006. In a February 6, 2006 note, Dr. Sammarco indicated that appellant was to remain on light duty until March 1, 2006.

By decision dated April 3, 2006, the Office denied modification of the January 11, 2006 decision for the reason that appellant had not established causal relationship.

On May 15, 2006 appellant requested reconsideration and submitted documents including a December 22, 2005 magnetic resonance imaging scan of his left foot. Dr. Shella Farooki, a Board-certified radiologist, found a nondisplaced fracture of the second metatarsal head with extensive underlying reactive bone marrow edema, periostitis and dorsal subcutaneous edema. She also listed moderate first metatarsophalangeal and sesamoid-metatarsal joint arthopathy. Appellant also submitted evidence previously considered by the Office.

In a July 6, 2006 decision, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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

[1] 5 U.S.C. §§ 8101-8193.

compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[3]

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.[4] 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.[5] 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 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.[6]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[7]

ANALYSIS -- ISSUE 1

Appellant established that on November 2, 2005 he was pushing and pulling heavy containers into a dumpster while in the performance of duty. The issue, therefore, is whether he submitted sufficient medical evidence to establish the causal relationship between his left foot condition and his work on that date. The Board finds that the medical evidence does not provide a rationalized medical opinion to establish that this employment incident caused his left foot condition.

Dr. G. James Sammarco obtained a history that appellant sustained an injury on November 2, 2005. However, he also noted a history of left foot pain on October 4, 2005, approximately one month prior to the alleged incident. Dr. G. James Sammarco stated that appellant had prior surgery on his left foot on June 20, 1996. The x-rays taken on November 7, 2005 showed a fracture of the second metatarsal and he indicated that appellant's left foot condition was aggravated by the claimed injury. Dr. G. James Sammarco does not describe the

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

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

[4] *John D. Carlone*, 41 ECAB 354 (1989).

[5] *Id.* For a definition of the term traumatic injury, *see* 20 C.F.R. § 10.5(ee).

[6] *John J. Carlone*, *supra* note 4.

[7] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

incident of November 2, 2005 which allegedly caused the injury. Furthermore, he did not fully explain how appellant's left foot injury would be caused or contributed by the work duties of November 2, 2005. It appears that appellant had previous surgery to his left foot. Dr. G. James Sammarco did not state how appellant's work duties would aggravate his preexisting left foot condition. He noted x-rays showed metatarsal fracture without significant trauma. In his report dated January 27, 2006, Dr. G. James Sammarco related that a stress fracture was caused by repetition of weight-bearing activities. He stated that appellant's standing activities contributed to the stress fracture. Dr. G. James Sammarco has alternatively attributed to the November 2, 2005 incident and to factors in appellant's employment over a longer period of time. He did not provide sufficient explanation of how left foot fracture would be due to the accepted work incidents of November 2, 2005.

Appellant submitted a note by Dr. V. James Sammarco dated November 7, 2005 indicating that appellant could return to sedentary work on November 8, 2005. However, Dr. V. James Sammarco provided no history of injury, no diagnosis and no opinion with regard to the cause of appellant's injury.

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 his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[8] Appellant has failed to submit medical evidence sufficient to establish that the alleged employment incident caused a personal injury. Therefore, the Office properly denied appellant's claim.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against compensation upon application by an employee who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.[9]

To require the Office to reopen a case for merit review under 5 U.S.C. § 8128(a), the Office's regulations provide that the application for reconsideration 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 legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[10]

[8] *Id.*

[9] 20 C.F.R. § 10.605.

[10] 20 C.F.R. § 10.606.

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meet at least one of these standards. If reconsideration is granted, the case is reopened and is reviewed on the merits.[11]

ANALYSIS -- ISSUE 2

On May 15, 2006 appellant submitted documents in support of his request for reconsideration. He did not submit any new relevant legal argument, nor did he allege that the Office erroneously applied or interpreted a specific point of law. Consequently, he is not entitled to a review of the merits of his claim based on the first and second requirements of section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previous considered by the Office, the Board finds that the evidence is duplicative of reports and documents previously considered. Material which is cumulative or duplicative of that already in the record had no evidentiary value in establishing the claim and does not constitute a basis for reopening a case for further merit review.[12] The only new evidence consists of MRI scan reports of Dr. Farooki. However, Dr. Farooki does not address the underlying issue of causation. Therefore, her opinion is not relevant to the issue on which appellant's claim was denied. Accordingly, appellant has failed to submit evidence sufficient to warrant further merit review of the claim.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury on November 2, 2005 in the performance of duty. Furthermore, appellant has failed to establish that the Office improperly denied his request for reconsideration pursuant to 5 U.S.C. § 8128(a).

[11] 5 U.S.C. §§ 8101-8193, § 8128(a). The Board has found that the imposition of the one-year limitation does not constitute an abuse of discretionary authority granted the Office under section 8128(a) of the Act. *See Adell Allen (Melvin L. Allen)*, 55 ECAB ___ (Docket No. 04-208, issued March 18, 2004).

[12] *Daniel M. Dupor*, 51 ECAB 482 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 6, April 3 and January 11, 2006 and December 27, 2005 are affirmed.

Issued: November 13, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board