United States Department of Labor
Employees' Compensation Appeals Board

D.G., Appellant	)	
and	)	**Docket No. 06-1099**
	)	**Issued: September 22, 2006**
U.S. POSTAL SERVICE, MARTINSVILLE POST OFFICE, Martinsville, IN, Employer	)	

Appearances:
D.G., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On April 10, 2006 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated December 28, 2005 finding that he had not established an injury on April 18, 2005 causally related to his federal employment and a February 22, 2006 decision denying his request for further merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over both merit and nonmerit decisions.

ISSUES

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a traumatic injury on April 18, 2005 as alleged; and (2) whether the Office properly declined to reopen appellant's claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

Appellant, then a 40-year-old letter carrier, filed a traumatic injury claim on May 18, 2005 alleging that on April 18, 2005 he sustained a strained left foot when walking up a driveway on his route. He stated that he caught his foot on the carport.

The employing establishment provided appellant with a Form CA-16, authorization for examination or treatment, on May 18, 2005, and indicated that Internal Medicine Associates was authorized to furnish office or hospital treatment as medically necessary for the effects of this injury. Kay Fields, a nurse practitioner,[1] completed this form as well as a duty status report on May 18, 2005 and diagnosed left great toe pain. She noted that appellant hit his left great toe on carport concrete stubbing it and indicated with a checkmark "yes" that appellant's diagnosed condition was due to this history of injury. In a separate treatment note, Ms. Fields stated that appellant had not fractured his left toe, instead had merely "jammed it."

In a letter dated November 23, 2005, the Office informed appellant that the evidence submitted was not sufficient to establish his claim, as Ms. Field was a nurse practitioner, not a physician under the Act, and as she had not provided a diagnosis but rather the subjective finding of toe pain. The Office requested medical evidence from appellant and allowed him 30 days for a response.

By decision dated December 28, 2005, the Office denied appellant's claim for traumatic injury finding that, although the alleged employment incident occurred as alleged, he failed to provide the necessary medical evidence to establish that an injury resulted from this incident.

Appellant requested reconsideration of the Office's December 28, 2005 decision on January 26, 2006 and submitted medical evidence. He submitted an additional form report dated May 18, 2005 completed by Ms. Fields and cosigned by Dr. Brad Bomba, a Board-certified internist, who found that appellant hit his left great toe on a concrete carport while carrying mail. Dr. Bomba diagnosed left great toe pain and recommended an x-ray. Appellant also submitted a negative x-ray report regarding his left great toe from Dr. Sean M. Flynn, a Board-certified radiologist.

By decision dated February 22, 2006, the Office declined to reopen appellant's claim for consideration of the merits. While the Office found that the evidence submitted was signed by a physician, the Office determined that this was cumulative.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act has the burden of proof to establish 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 or specific condition for which compensation is claimed is causally related to the employment injury.[2] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," namely, he

[1] A nurse practitioner is not a "physician" pursuant to the Federal Employees' Compensation Act, 5 U.S.C. §§ 8101-8193, 8101(2). Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law…." However the contents of the report are relevant as they related to the allegations and facts of the case. *Paul Foster*, 56 ECAB ___ (Docket No. 04-1943, issued December 21, 2004).

[2] *See Paul Foster, supra* note 1.

must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged, and that such event, incident or exposure caused an injury.[3]

ANALYSIS -- ISSUE 1

The Federal (FECA) Procedure Manual provides that the Office's Form CA-16 is the official form for authorizing examination or treatment at the expense of the Office. It is used primarily by the official supervisor to refer an employee injured by accident to a local qualified private physician or hospital of the employee's choice.[4] Further, the Office regulations provide that the Form CA-16 shall be used primarily for traumatic injuries,[5] and that, in order to be valid, a Form CA-16 must give the full name and address of the duly qualified physician or medical facility authorized to provide service and must be signed and dated by the authorizing official.[6] The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by the Office.[7]

In the instant case, the employing establishment properly issued the Form CA-16 and thus, appellant is entitled to payment of medical treatment provided by Internal Medicine Associates[8] pursuant to the Form CA-16.[9]

There is no dispute that on April 18, 2005 that appellant caught his left foot on the carport when walking while in the performance of his duties as a letter carrier. The issue is whether appellant has established that he sustained an injury as a result.

The only evidence appellant submitted to support his claim was form reports and a note from Ms. Fields, a nurse practitioner. As nurse practitioners are not deemed physicians under the Act,[10] the Board finds that these reports are of no probative medical value as they do not constitute competent medical evidence and therefore are insufficient to establish appellant's claim.

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[3] *Id.*

[4] Federal (FECA) Procedure Manual, *Authorizing Examination and Treatment*, Chapter 3.300(3) (September 1996).

[5] 20 C.F.R. § 10.300(a).

[6] 20 C.F.R. § 10.300(c).

[7] *Id.*

[8] Nurse Fields is a listed member of Internal Medicine Associates.

[9] Where an employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *Tracey P. Spillane*, 54 ECAB 608, 610 (2003).

[10] *See supra* note 1.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[11] the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[12] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[13]

ANALYSIS -- ISSUE 2

In this case, the Office initially denied appellant's claim as he failed to submit any medical evidence within the definition of the Act. The Office properly noted that, as a nurse practitioner, Ms. Fields was not a physician for the purposes of the Act and could not submit medical evidence.[14] In support of his request for reconsideration, appellant remedied this defect by submitting evidence signed by appropriate medical personnel, Dr. Bomba, a Board-certified internist. As the record did not previously contain any medical evidence addressing appellant's condition, the new report signed by Dr. Bomba constitutes relevant, pertinent new evidence. The Office also denied reopening appellant's case on the merits as it found Dr. Bomba's report cumulative of Ms. Fields' previous diagnosis of left great toe pain. The Board notes that an evaluation of the weight of the evidence goes beyond the standard to be applied to reopen a case for further review of the merits. The report of Dr. Bomba is relevant, pertinent and new medical evidence to the issue of whether appellant sustained an injury as a result of his accepted employment incident. The requirement for reopening a claim for merit review does not include the requirement that a claimant shall submit all evidence necessary to discharge his or her burden of proof. The claimant need only submit evidence that is relevant and pertinent and not previously considered.[15] Accordingly, the Office should have reviewed appellant's case on the merits and discussed this relevant, new and pertinent evidence.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on April 18, 2005, as alleged. The Board further finds that the Office improperly refused to reopen appellant's claim for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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[11] 5 U.S.C. §§ 8101-8193, § 8128(a).

[12] 20 C.F.R. § 10.606(b)(2).

[13] 20 C.F.R. § 10.608(b).

[14] *Supra* note 1.

[15] *See Billy B. Scoles*, 57 ECAB ___ (issued December 7, 2005); *Sydney W. Anderson*, 53 ECAB 347 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 28, 2005 is affirmed. The decision of the Office dated February 22, 2006 is set aside and this case remanded for further consideration consistent with this opinion.

Issued: September 22, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board