



## **FACTUAL HISTORY**

This is the second appeal in this case to the Board. In an order dated April 19, 2005, the Board set aside the Office's April 20, 2004 denial of appellant's request for reconsideration and remanded the case for proper consideration of the evidence.<sup>1</sup>

On January 13, 1999 appellant, a 41-year-old letter carrier, filed a traumatic injury claim alleging that on January 8, 1999 she injured her feet delivering mail in inclement weather.<sup>2</sup> The Office accepted the claim for bilateral tendinitis/strain and later expanded the claim to include Morton's neuroma, right foot. Appellant returned to limited duty on May 20, 1999. On April 5, 2000 she filed an occupational disease claim alleging that she had developed tarsal tunnel syndrome, hammertoes and bunions, as a result of walking and prolonged standing in frigid temperatures while performing her employment-related duties.<sup>3</sup>

On June 21, 2000 the Office denied appellant's occupational disease claim on the grounds that the claimed medical conditions had not been shown to be causally related to factors of employment.<sup>4</sup> By decision dated November 17, 2000, an Office hearing representative set aside the June 21, 2000 decision and remanded the case for further development of the medical evidence. Finding that the April 5, 2000 claim was actually an expansion of the January 13, 1999 claim, the hearing representative directed the Office to double File No. A10-498108 into File No. A10-484070.

Appellant was treated by Dr. Samuel Chmell, a Board-certified orthopedic surgeon, who opined on February 1, 2001 that appellant's hammertoe and bunion conditions were related to her employment. In a January 10, 2001 report of a second opinion examination, Dr. Leonard R. Smith, a Board-certified orthopedic surgeon, opined that her bunions and hammertoe deformities were not caused, aggravated, precipitated or exacerbated by her employment activities. He stated that there was no orthopedic evidence of any pathology in appellant's feet or ankles related to her work.

By decision dated February 1, 2001, the Office again denied appellant's occupational disease claim, finding that the medical evidence did not establish that her condition was related to her employment. On June 21, 2001 an Office hearing representative found a conflict between the medical opinions of appellant's treating physician and the second opinion physician. Accordingly, the representative set aside the February 1, 2001 decision and remanded the case for further development of the medical evidence, including an impartial medical examination.

On remand, the Office referred appellant, together with the entire medical record and a statement of accepted facts, to Dr. Alan A. Hyman, a Board-certified orthopedic surgeon, for an

---

<sup>1</sup> Docket No. 05-319 (issued April 19, 2005).

<sup>2</sup> File No. 10-0484070.

<sup>3</sup> File No. 10-0498108. Appellant also has an approved occupational disease claim for a March 1, 1999 injury that was accepted for lumbosacral radiculopathy on the right.

<sup>4</sup> The record does not contain a copy of the June 21, 2000 decision.

impartial medical examination. In a September 13, 2001 report, Dr. Hyman diagnosed mild bilateral hallux valgus deformities; mild bilateral supple hammertoe deformities lesser toes; right ankle tarsal tunnel syndrome; and Morton's neuroma right foot. He opined that appellant's hallux valgus deformities were not caused by work activities, explaining that these conditions were extremely common and that, if there had been a progression of these deformities, it should be considered a natural progression. Dr. Hyman opined that appellant's tarsal tunnel syndrome and Morton's neuroma were causally related to her employment activities.

By decision dated October 24, 2001, the Office accepted that appellant's tarsal tunnel syndrome was work related. However, the Office denied the claim as to bilateral hammertoes and hallux deformities, finding that these conditions were not causally related to appellant's employment.

On October 21, 2002 appellant requested reconsideration of the October 24, 2001 decision, submitting follow-up reports from her treating physician. She contended that Dr. Hyman's referee opinion should not have been given special weight, as it was not factual and was not well rationalized. By decision dated January 16, 2003, the Office denied modification of its October 24, 2001 decision.

On January 13, 2004 appellant again requested reconsideration. She alleged that the Office failed to properly evaluate the medical evidence. Referring to numerous sections of the Office procedure manual and the Board's case law, appellant contended that the Office failed to apply and misinterpreted certain points of law. She argued that the Office incorrectly accorded special weight to the impartial medical examiner. Appellant stated that information was improperly sent to the Office from the employing establishment without her knowledge. Exhibits submitted included a description of her duties as a letter carrier and an undated transcript of a hearing before Judge Jackson. In a nonmerit decision dated April 20, 2004, the Office denied appellant's request for reconsideration.

Appellant appealed the April 20, 2004 decision to the Board. In an order dated April 19, 2005, the Board set aside the Office's April 20, 2004 denial of her request for reconsideration and remanded the case for proper consideration of the evidence.<sup>5</sup> In a merit decision dated August 24, 2005, the Office denied modification of its January 16, 2003 decision.

On August 23, 2006 appellant again requested reconsideration. She contended that the Office failed to comply with the Board's April 19, 2005 order and refused to adhere to its own procedure manual with regard to the selection of medical examiners and in weighing medical evidence. Appellant stated that the claims examiner "appeared" not to have reviewed the entire case file and did not give reasons for assigning weight to the referee opinion. In a declaration dated August 23, 2006, she contended that her claimed condition was causally related to factors of her federal employment because she never "had any problems" before January 8, 1999. Appellant did not submit any additional medical evidence.

By decision dated September 21, 2006, the Office denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant merit review.

---

<sup>5</sup> Docket No. 05-319 (issued April 19, 2005).

### LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,<sup>6</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulation,<sup>7</sup> which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, which sets forth arguments and contains evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the [Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>8</sup>

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.<sup>9</sup>

### ANALYSIS

In her August 23, 2006 request for reconsideration, appellant reiterated that her condition was causally related to her employment and contended that the Office failed to adhere to its procedure manual with regard to the selection of medical examiners and in weighing medical evidence. However, she failed to show how the Office erred in its application of a specific point of law. Appellant also failed to advance a relevant legal argument not previously considered, as the arguments espoused were raised and considered in her January 13, 2004 request for reconsideration. The submission of evidence or argument that repeats or duplicates that already in the case record does not constitute a basis for reopening a case.<sup>10</sup>

---

<sup>6</sup> 5 U.S.C. § 8128(a).

<sup>7</sup> 20 C.F.R. § 10.606(b).

<sup>8</sup> *Id.*

<sup>9</sup> See *Helen E. Paglinawan*, 51 ECAB 591 (2000).

<sup>10</sup> *Id.*

Appellant argued that the Office failed to comply with the Board's April 19, 2005 order, stating that the claims examiner "appeared" not to have reviewed the entire case file and failed to give reasons for assigning weight to the referee opinion. However, the Board finds that these arguments have no reasonable color of validity and therefore are not a basis for reopening the case on its merits.<sup>11</sup> The record does not establish that pertinent evidence was not considered by the Office. Furthermore, the reasons for assigning weight to the medical opinion of the impartial medical examiner were clearly stated in the Office's October 24, 2001 decision, which was incorporated by reference in the August 24, 2005 decision.

For reasons stated above, the Board finds that appellant did not demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, she was not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).<sup>12</sup>

Appellant submitted no additional evidence in support of her reconsideration request. However, she contended that her claimed condition was causally related to factors of her federal employment because she never "had any problems" before January 8, 1999. The Board notes that lay individuals, such as appellant, are not competent to render a medical opinion.<sup>13</sup> Therefore, appellant's contention does not constitute relevant and pertinent evidence not previously considered by the Office. Moreover, an award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.<sup>14</sup> As she did not submit relevant and pertinent new evidence not previously considered by the Office, she did not meet the requirements of the third above-noted element of section 10.606(b)(2).<sup>15</sup>

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her August 23, 2006 request for reconsideration.

---

<sup>11</sup> See *Jennifer A. Guillary*, 57 ECAB \_\_\_\_ (Docket No. 06-208, issued March 13, 2005) (while a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity).

<sup>12</sup> 20 C.F.R. § 10.606(b)(2)(1), (2).

<sup>13</sup> *Robert J. Krstyen*, 44 ECAB 227 (1992).

<sup>14</sup> *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>15</sup> 20 C.F.R. § 10.606(b)(2)(3).

**CONCLUSION**

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 21, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 2007  
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