

**United States Department of Labor
Employees' Compensation Appeals Board**

A.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Vicksburg, MS, Employer**

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**Docket No. 07-1151
Issued: September 10, 2007**

Appearances:
Linda Temple, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 13, 2007 appellant, through his representative, filed a timely appeal from a May 18, 2006 decision of the Office of Workers' Compensation Programs denying his occupational disease claim and a January 24, 2007 decision denying his request for review of the written record by an Office hearing representative. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant has established that he sustained swelling in both feet in the performance of his duty, causally related to factors of his federal employment; and (2) whether the Office properly denied appellant's request for review of the written record by an Office hearing representative.

FACTUAL HISTORY

On March 24, 2006 appellant, then a 44-year-old mail carrier, filed an occupational disease claim alleging that on March 11, 2006 he first realized the swelling in his feet was due to constant walking and dismounting while on his mail route.

In a letter dated April 3, 2006, the Office advised appellant that the evidence submitted was insufficient to support his claim. It instructed appellant to provide additional factual and medical evidence, including a comprehensive medical report from his treating physician describing his symptoms, results of examinations and tests, diagnosis, the treatment provided and the doctor's opinion with medical rationale on the cause of his condition. The Office requested that appellant submit this evidence within 30 days. Appellant did not respond.

By decision dated May 18, 2006, the Office denied appellant's claim on the grounds that there was no medical evidence providing a diagnosis connecting a condition to the alleged employment factor.

Subsequent to the decision appellant submitted a December 27, 2006 disability slip and December 15, 2006 certification of health care report by Dr. Penny Lawin, a treating Board-certified orthopedic surgeon; a November 27, 2006 disability slip by Dr. J.R. Barnes, a treating Board-certified family practitioner; and progress notes for the period March 24 through April 28, 2006 by Dr. Brian E. Schockley, a treating podiatrist.¹

In a request with a postmark date of December 22, 2006, appellant requested review of the written record by an Office hearing representative.

By decision dated January 24, 2007, the Office's Branch of Hearings and Review denied appellant's request for review for the written record by an Office hearing representative. The Office found that appellant's request was postmarked December 22, 2006, which was more than 30 days after issuance of the May 18, 2006 decision and that he was not entitled to review of the written record as a matter of right. The Office nonetheless considered the matter in relation to the issue involved and denied appellant's request on the grounds that the issue was factual and medical in nature and could be addressed through the reconsideration process by submitting additional evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are

¹ As this evidence was not reviewed by the Office in a merit decision, it may not be considered by the Board in this appeal. See 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

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 on a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁵

The medical evidence required to establish causal relationship is generally rationalized medical opinion 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 medial 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

ANALYSIS -- ISSUE 1

At the time the Office issued its May 18, 2006 decision the record was devoid of any factual or medical information that would support appellant's assertion that his employment duties of walking and dismounting on his mail route caused or aggravated the swelling in his feet. Appellant did not respond to the Office's request for the requisite evidence. There is no evidence documenting an employment-related medical condition.

In this case, appellant did not provide the required factual and medical evidence necessary to establish a *prima facie* claim for compensation benefits under the Act.⁴ Accordingly, the Board finds that he has failed to establish that he sustained an injury in the performance of duty.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office final

³ *Sedi L. Graham*, 57 ECAB ____ (Docket No. 06-135, issued March 15, 2006).

⁴ *D.D.*, 57 ECAB ____ (Docket No. 06-1315, issued September 14, 2006).

⁵ *D.E.*, 58 ECAB ____ (Docket No. 07-27, issued April 6, 2007).

⁶ *L.D.*, 58 ECAB ____ (Docket No. 06-1627, issued February 8, 2007); *Solomon Polen*, 51 ECAB 341 (2000).

decision.⁷ A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.⁸ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁹ In such a case, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.¹⁰

ANALYSIS -- ISSUE 2

Appellant's undated request for a review of the written record by an Office hearing representative was postmarked December 22, 2006 which was more than 30 days after the Office's May 18, 2006 decision denying his claim. The Board finds that, as his request was more than 30 days following the issuance of the Office's decision, appellant is not entitled to a hearing as a matter of right. The Office considered whether to grant a discretionary hearing and advised appellant that he could pursue his claim through the reconsideration process. The Board finds that the Office properly exercised its discretion in denying appellant's request for a hearing. The only limitation on the Office's authority is reasonableness. Abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to logic and deductions from known facts.¹¹ The Board will affirm the Office's January 24, 2007 decision denying appellant a review of the written record by an Office hearing representative as there is no evidence that the Office abused its discretionary authority.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a foot condition in the performance of duty.

⁷ 5 U.S.C. § 8124(b)(1). See *D.F.*, 58 ECAB ____ (Docket No. 06-1815, issued November 27, 2006).

⁸ 20 C.F.R. § 10.616. See *Hubert Jones, Jr.*, 57 ECAB ____ (Docket No. 05-603, issued March 10, 2006).

⁹ *Teresa M. Valle*, 57 ECAB ____ (Docket No. 06-438, issued April 19, 2006).

¹⁰ *William E. Seare*, 47 ECAB 663 (1996).

¹¹ See *Hubert Jones, Jr.*, 57 ECAB ____ (Docket No. 05-603, issued March 10, 2006) and *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 24, 2007 and May 18, 2006 are affirmed.

Issued: September 10, 2007
Washington, DC

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

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

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