

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

W.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Round Lake, MN, Employer**

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**Docket No. 08-895
Issued: August 6, 2008**

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 5, 2008 appellant timely appealed the January 10, 2008 nonmerit decision of the Office of Workers' Compensation Programs, which denied his request for reconsideration. He also timely appealed the Office's December 18, 2007 merit decision denying his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim.¹

ISSUES

The issues are: (1) whether appellant sustained an injury in the performance of duty; and (2) whether the Office properly denied appellant's December 21, 2007 request for reconsideration under 5 U.S.C. § 8128(a).

¹ The record on appeal includes additional medical evidence that postdates the Office's January 10, 2008 decision. The Board cannot consider evidence for the first time on appeal. The review of a case shall be limited to the evidence in the case record which was before the Office at the time of its final decision. 20 C.F.R. § 10.501.2(c) (2008).

FACTUAL HISTORY

Appellant, a 60-year-old rural carrier, filed an occupational disease claim (Form CA-2) for a right foot bunion. He identified September 30, 2006 as the date he was first aware of his condition, but it was not until September 17, 2007 that appellant reportedly first realized the employment-related nature of his condition. Appellant attributed his condition to wearing shoes and having to stand from 1 to 1½ hours at a time. He also explained that he had to brace himself with his right foot while driving four to five hours. Appellant did not submit any medical evidence with his September 19, 2007 claim form.

The Office advised appellant on October 11, 2007 that he needed to submit a comprehensive medical report regarding his claimed right foot condition. Appellant was afforded 30 days within which to submit the requisite medical evidence.

The Office subsequently received an October 17, 2007 duty status report (Form CA-17) from Dr. William F. Bell.² The report noted clinical findings of severe right foot bunion. Dr. Bell also noted that appellant was awaiting approval for right foot surgery. Other than his duty status report, the Office did not receive any additional medical evidence within the allotted 30-day timeframe.

By decision dated December 18, 2007, the Office denied appellant's September 19, 2007 claim for a right foot injury. The Office found that the evidence did not establish that the claimed medical condition was employment related.

On December 21, 2007 appellant requested reconsideration. Although he noted that his doctor had submitted medical evidence dated December 13, 2007, appellant's request for reconsideration was not accompanied by any additional evidence. In a decision dated January 10, 2008, the Office denied appellant's December 21, 2007 request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁴

² Dr. Bell is a Board-certified orthopedic surgeon.

³ 5 U.S.C. §§ 8101-8193 (2000).

⁴ 20 C.F.R. § 10.115(e), (f) (2008); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a 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 diagnosed condition is causally related to the identified employment factors.⁵

ANALYSIS -- ISSUE 1

Appellant did not submit a rationalized medical opinion in support of his claim for an employment-related right foot condition. An October 17, 2007 duty status report was the only evidence the Office received prior to issuing its December 18, 2007 decision. This report, prepared by Dr. Bell, noted clinical findings of severe right foot bunion. However, Dr. Bell did not provide a diagnosis due to injury. The Form CA-17 noted a September 17, 2007 date of injury, and the description of how the injury occurred was simply "injury on right foot, bunion." Dr. Bell did not attribute appellant's right foot bunion to any specific employment duties as identified by appellant. He also did not relate this condition to appellant's rural carrier duties in general. The record before the Office was devoid of any medical evidence attributing appellant's claimed right foot condition to his employment. Accordingly, the Office properly denied appellant's September 19, 2007 occupational disease claim.

LEGAL PRECEDENT -- ISSUE 2

The Office has the discretion to reopen a case for review on the merits.⁶ Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (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.⁷ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁸

ANALYSIS -- ISSUE 2

Appellant's December 21, 2007 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Therefore, appellant is not entitled to a review of the merits of his claim based on the

⁵ *Victor J. Woodhams*, *supra* note 4.

⁶ 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ *Id.* at § 10.608(b).

first and second above-noted requirements under section 10.606(b)(2).⁹ Appellant also failed to satisfy the third requirement under section 10.606(b)(2). He did not submit any relevant and pertinent new evidence with his December 21, 2007 request for reconsideration. Appellant claimed that his doctor had submitted medical evidence dated December 13, 2007. However, this evidence is not part of the record and appellant did not submit any additional evidence with his request for reconsideration. Consequently, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).¹⁰ As appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Office properly denied the December 21, 2007 request for reconsideration.

CONCLUSION

The Board finds that appellant failed to establish that his claimed right foot bunion is employment related. The Board further finds that the Office properly denied appellant's December 21, 2007 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2008 and December 18, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 6, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁹ *Id.* at § 10.606(b)(2)(i) and (ii).

¹⁰ *Id.* at § 10.606(b)(2)(iii).