United States Department of Labor
Employees' Compensation Appeals Board

C.W., Appellant	)	
and	)	**Docket No. 08-1606**
	)	**Issued: December 3, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Youngwood, PA, Employer	)	

Appearances:
Edward Daniel, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 17, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated January 7, 2008 finding that he had not established an injury due to his federal employment. He also appealed a May 8, 2008 nonmerit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over both the merit and nonmerit issues of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a stress fracture of his left foot on June 30, 2007; and (2) whether the Office properly refused to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 3, 2007 appellant, then a 42-year-old electronic technician, filed a traumatic injury claim alleging on June 30, 2007 he sustained a stress fracture of his left foot in the

performance of duty. In a narrative statement, he reported that his foot began to hurt on June 30, 2007 but that he continued to work despite the pain for the next three days. In a statement dated July 5, 2007, Robert Steward, a coworker, noted on June 30, 2007 that appellant informed him that his foot became swollen and had been painful for several days. Dr. Mark J. Ray, a podiatrist, completed a form report on July 10, 2007 and diagnosed metatarsal stress fractures on the left. He indicated that appellant's condition was due to prolonged standing and walking at work.

In a letter dated August 17, 2007, the Office requested additional medical and factual evidence in support of appellant's claim. It allowed 30 days for a response.

By decision dated September 27, 2007, the Office denied appellant's claim on the grounds that he failed to submit the necessary medical opinion evidence to establish a causal relationship between his diagnosed stress fractures and his employment.

Appellant requested reconsideration on October 5, 2007. He submitted a report dated September 18, 2007 from Dr. Ray, noting that he sought treatment on July 3, 2007 for ulcerations of his toes. Dr. Ray opined that appellant's diabetic neuropathy raised his pain tolerance. Due to appellant's prolonged working, he sustained stress fractures in one of his metatarsals and the other metatarsals subsequently fractured. Dr. Ray stated that appellant's second, third and fourth metatarsals seemed likely to have been fractured before his fifth metatarsal as those bones were further along in the healing process.

By decision dated January 7, 2008, the Office denied modification of appellant's prior decision finding that the medical evidence did not support his claim for a traumatic injury on June 30, 2007.

Appellant requested reconsideration on March 1, 2008 and resubmitted Dr. Ray's September 18, 2007 report.

By decision dated May 5, 2008, the Office declined to reopen appellant's claim for reconsideration of the merits on the grounds that he failed to submit relevant new evidence or argument.

LEGAL PRECEDENT -- ISSUE 1

The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[1] In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment

[1] 20 C.F.R. § 10.5(ee).

incident caused a personal injury. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[2] As part of an employee's burden of proof, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relation. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[3]

ANALYSIS -- ISSUE 1

The Office accepted that appellant walked in the performance of duty on June 30, 2007. Appellant attributed this employment activity as a cause of his foot pain on that date. However, the Office found that he did not submit sufficient medical evidence to establish that walking on June 30, 2007 was the cause of his multiple stress fractures to the left foot.

Dr. Ray, a podiatrist, completed a report on July 10, 2007 and diagnosed multiple metatarsal stress fractures of the left foot. He indicated that appellant's condition was due to prolonged standing and walking at work. However, Dr. Ray did not explain what factors on which he based his stated conclusion. On September 18, 2007 he diagnosed multiple stress fractures of appellant's metatarsal of his left foot. Dr. Ray and stated that he believed that appellant's preexisting diabetic neuropathy had raised his pain tolerance to such an extent that appellant was unaware that he had sustained stress fractures and continued to walk and stand for prolonged periods result in additional fractures. The medical evidence does not support appellant's claim for a traumatic injury on June 30, 2007. Dr. Ray's reports suggest that appellant's stress fractures resulted from prolonged walking and standing for a period greater than a single work shift. He noted the preexisting diabetic neuropathy but did not address how appellant's work on June 30, 2007 would contribute to the diagnosed fractures. The medical evidence does not support appellant's claim. The Office properly denied appellant's claim for a traumatic injury arising on June 30, 2007.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[4] 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.[5] When a claimant fails to meet one of the above standards, the Office

[2] *Steven S. Saleh*, 55 ECAB 169, 171-72 (2003).

[3] *James Mack*, 43 ECAB 321, 328-29 (1991).

[4] 5 U.S.C. §§ 8101-8193, § 8128(a).

[5] 20 C.F.R. § 10.606(b)(2).

will deny the application for reconsideration without reopening the case for review on the merits.[6]

ANALYSIS -- ISSUE 2

Appellant requested reconsideration on March 1, 2008 and resubmitted Dr. Ray's September 18, 2007 report. As this evidence was already considered by the Office in reaching the January 7, 2008 decision, this is not relevant and pertinent new evidence not previously considered by the Office and is not sufficient to require the Office to reopen appellant's claim for consideration of the merits under section 8128(a) of the Act.

CONCLUSION

The Board finds that appellant has not submitted rationalized medical opinion evidence to establish that the stress fractures of his left foot occurred as the result of a traumatic injury on June 30, 2007. The Board further finds that the Office properly declined to reopen appellant's claim for consideration of the merits on May 5, 2008 on the grounds that his request for reconsideration was not accompanied by relevant and pertinent new evidence.

ORDER

IT IS HEREBY ORDERED THAT the May 8 and January 7, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 3, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[6] *Id*. at § 10.608(b).