

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

C.R., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Monterey, CA, Employer)

**Docket No. 07-2219
Issued: February 19, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 29, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 21, 2006, denying his claim that his bilateral plantar fasciitis was employment related, and a June 4, 2007 decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant established that he sustained an injury in the performance of duty causally related to factors of his federal employment; and (2) whether the Office properly denied his request for merit review of his claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

On September 20, 2006 appellant, then a 44-year-old letter carrier, filed an occupational disease claim alleging that his heel pain was employment related. He first became aware of his condition in July 2005 and first realized that his injury was caused or aggravated by his

employment in July 2006. In an attached statement, appellant attributed his condition to long periods of standing and walking for up to 10 hours per day.

In support of his claim, appellant submitted unsigned reports dated August 8 to September 13, 2006 which diagnosed left plantar fasciitis. The doctor of record is noted as Scott Smith, identified as a podiatrist on the September 13, 2006 report.

In a letter dated October 5, 2006, the Office advised appellant that additional evidence was needed in support of his claim. He was instructed to provide medical evidence, including a comprehensive medical report from a treating physician containing a diagnosis, results of examinations and tests, the treatment provided and the doctor's opinion on the cause of his condition. No additional evidence was forthcoming.

By decision dated December 21, 2006, the Office denied appellant's claim on the grounds that he did not submit any medical evidence establishing that his left plantar fasciitis was caused or aggravated by his federal employment.

On February 25, 2007 appellant requested reconsideration and indicated that he submitted a report by Dr. Peter G. Gerbino, a treating Board-certified orthopedic surgeon, in support of his request.¹

By decision dated June 4, 2007, the Office denied further merit review. It found that, while appellant referenced a report by Dr. Gerbino, it was not submitted with his request.²

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

¹ The Board notes that the report identified by appellant was not included with his request for reconsideration.

² The Board notes that, subsequent to the June 4, 2007 decision, appellant submitted Dr. Gerbino's February 1, 2007 report with his appeal to the Board. However, the Board may not consider new evidence on appeal. See 20 C.F.R. § 501.2(c); *Donald R. Gervasi*, 57 ECAB ____ (Docket No. 05-1622, issued December 21, 2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

³ 5 U.S.C. §§ 8101-8193.

⁴ *L.A.*, 58 ECAB ____ (Docket No. 07-643, issued July 17, 2007); *Bonnie A. Contreras*, 57 ECAB ____ (Docket No. 06-167, issued February 7, 2006); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *D.E.*, 58 ECAB ____ (Docket No. 07-27, issued April 6, 2007); *Victor D. Woodhams*, 41 ECAB 345 (1989).

An occupational disease or injury is one caused by specified employment factors occurring over a longer period than a single work shift or workday.⁶ The test for determining whether appellant sustained a compensable occupational disease or injury is three-pronged. To establish the factual elements of the claim, appellant 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 the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the 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 factors identified by the claimant.⁷

The medical evidence required to establish causal relationship generally is 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.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant⁹ and must be one of reasonable medical certainty¹⁰ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

ANALYSIS -- ISSUE 1

Appellant alleged that his left foot condition was due to long periods of standing and walking for up to 10 hours. The employing establishment did not dispute that appellant was engaged in such employment activities as a letter carrier. The Board notes that there is no dispute that appellant's job required him to stand and walk up to 10 hours. The issue to be resolved is whether appellant's left foot condition resulted from these employment activities. The Board finds that the medical evidence is not sufficient to establish his claim.

In unsigned reports dated August 8 and 21 and September 13, 2006, Dr. Scott Smith, a treating podiatrist, diagnosed left plantar fasciitis. He did not address the issue of causal

⁶ See *D.D.*, 57 ECAB ____ (Docket No. 06-1315, issued September 14, 2006); *William Taylor*, 50 ECAB 234 (1999); see also 20 C.F.R. § 10.5(q).

⁷ *J.M.*, 58 ECAB ____ (Docket No. 06-2094, issued January 30, 2007); *Donna L. Mims*, 53 ECAB 730 (2002).

⁸ *G.G.*, 58 ECAB ____ (Docket No. 06-1564, issued February 27, 2007); *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *L.D.*, 58 ECAB ____ (Docket No. 06-1627, issued February 8, 2007); *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁰ *Roy L. Humphrey*, 57 ECAB ____ (Docket No. 05-1928, issued November 23, 2005); *John W. Montoya*, 54 ECAB 306 (2003).

¹¹ *J.M.*, *supra* note 7; *Judy C. Rogers*, 54 ECAB 693 (2003).

relationship. The Board has held that an unsigned medical report with no adequate indication that it was completed by a physician is not considered probative medical evidence.¹²

The Office advised appellant of the medical evidence necessary for establishing a work-related injury but such evidence was not forthcoming. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.¹³ To establish causal relationship, he must submit a physician's report in which the physician reviews the employment factors identified as causing his condition and, taking these factors into consideration as well as findings upon examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.¹⁴ Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof to establish that he sustained an employment-related foot condition

LEGAL PRECEDENT -- ISSUE 2

The Federal Employees' Compensation Act¹⁵ provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.¹⁶ The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.¹⁷

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹⁸

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.¹⁹ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on

¹² See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹³ *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁴ *Calvin E. King*, 51 ECAB 394 (2000).

¹⁵ 5 U.S.C. § 8101 *et seq.*

¹⁶ 5 U.S.C. § 8128(a). See *Tina M. Parrelli-Ball*, 57 ECAB ____ (Docket No. 06-121, issued June 6, 2006).

¹⁷ 20 C.F.R. § 10.605.

¹⁸ 20 C.F.R. § 10.606. See *Susan A. Filkins*, 57 ECAB ____ (Docket No. 06-868, issued June 16, 2006).

¹⁹ 20 C.F.R. § 10.607(a). See *Joseph R. Santos*, 57 ECAB ____ (Docket No. 06-452, issued May 3, 2006).

its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.²⁰

ANALYSIS -- ISSUE 2

The Office denied appellant's occupational disease claim on the grounds that the medical evidence did not establish that his left foot condition was causally related to his federal employment. The Board finds that his request for reconsideration met none of the regulatory requirements for a review of the merits of this decision.

Appellant's February 25, 2007 request for reconsideration did not allege that the Office erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument not previously considered by the Office. He is thus not entitled to further review on the merits of his case under the first two sections of 10.606(b)(2).²¹ Although appellant stated that he was submitting new medical evidence as the basis for his reconsideration request, a review of the record shows no medical report was included with his request. As there was no new relevant or pertinent evidence for the Office to consider he was not entitled to review under the third section of 10.606(b)(2).²²

Because appellant did not meet any of the statutory requirements for a review of the merits of his claim, the Office properly denied his February 25, 2007 request for reconsideration.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained an occupational disease in the performance of duty causally related to factors of his federal employment and that the Office properly denied appellant's request for reconsideration without conducting a merit review.

²⁰ 20 C.F.R. § 10.608(b). See *Candace A. Karkoff*, 56 ECAB 622 (2005).

²¹ 20 C.F.R. § 10.606(b)(2)(i) and (ii).

²² 20 C.F.R. § 10.606(b)(2)(iii).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 4, 2007 and December 21, 2006 are affirmed.

Issued: February 19, 2008
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