United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
and	)	**Docket No. 08-160**
	)	**Issued: October 23, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Jacksonville, FL, Employer	)	

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 23, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 9, 2007 merit decision regarding his claim for foot care and its September 12, 2007 decision denying his request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a). Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office abused its discretion in denying appellant's request for reimbursement for foot care; and (2) whether the Office properly denied his request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

The Office accepted that on March 12, 1984 appellant, then a 51-year-old mail carrier, sustained a right hip strain due to twisting his right knee and hip while delivering mail. On June 13, 1984 he sustained temporary aggravation of degenerative arthritis of his right hip due to

twisting his right knee and hip while running from a dog. It also accepted that in late 1985 appellant sustained a permanent aggravation of degenerative hip arthritis of his left hip and left hip bursitis due to his repetitive job duties. Appellant received compensation for periods of disability and last worked in 1989. He underwent several authorized surgeries, including a total right hip arthroplasty on September 12, 1984, a total left hip arthroplasty on February 12, 1998 and a revised right hip arthroplasty on December 23, 2004. In an April 5, 1994 decision, the Office granted appellant a schedule award for a 40 percent permanent impairment of his left leg.

In a November 24, 2001 letter, appellant sought the care of a podiatrist. He asserted that, due to his hip replacements, he could not bend or pull his legs into position in order to take care of his feet and toenails. On December 14, 2001 the Office responded that appellant needed to submit medical evidence from his treating physician advising whether such treatment was medically necessary or whether he could provide it.

In a May 23, 2002 letter, Dr. Georges Bahri, an attending Board-certified orthopedic surgeon, stated that it had come to his attention that appellant was seeking treatment with a podiatrist to care for his feet and toenails. He noted, "[Appellant] is unable to do this for himself due to his bilateral hip replacements. This is a reasonable request and I do believe it is medically necessary." On June 4, 2002 the Office asked appellant to clarify what type of treatment he sought from a podiatrist. On August 1, 2002 appellant indicated that he suffered from ingrown toenails and that calluses formed when pressure was placed on the bottom of his feet.[1]

In an August 22, 2005 letter, appellant indicated that he was seeking the care of a podiatrist because his physical condition made it impossible for him to attend to his feet and toenails. He reiterated that he could not bend or pull his legs into position to care for his feet. On September 1, 2005 the Office advised appellant to submit a medical report explaining why he needed to see a podiatrist to treat his feet. Appellant resubmitted a copy of Dr. Bahri's May 23, 2002 letter.

On November 1, 2005 the Office informed appellant that, before it could authorize him to see a podiatrist, he needed to provide the name and address of the medical provider who would treat his feet. On November 16, 2005 Dr. Daryl H. Makoff, a podiatrist, indicated that he was willing to treat appellant provided that he received written authorization from the Office.

In a January 12, 2006 letter, the Office stated that it was responding to appellant's request to have Dr. Makoff provide podiatrist care for his feet for "effects of your employment injury which has been accepted." The Office noted:

> "This letter authorizes Dr. Daryl H. Makoff [doctor of podiatric medicine] as your designated physician for podiatrist care effective the date of this letter. However, regardless of this authorization, the physician you have selected must be enrolled as a provider with our central bill payment and medical authorization unit. If the

[1] In a December 17, 2003 decision, the Office granted appellant a schedule award for a 75 percent permanent impairment of his right leg.

> physician is not yet enrolled, it is imperative that the physician contact the central bill payment and medical authorization unit … to initiate the enrollment process. Until the physician has become enrolled, no medical bills will be paid. Your physician should also contact the central bill payment and medical authorization unit to obtain specific medical treatment authorizations."[2]

On May 1, 2007 an Office senior claims examiner advised appellant that Dr. Makoff's office stated that authorization was needed for the treatment of an "in-grown toenail" and that Dr. Makoff's office had not billed the Office for any services provided. Regarding a meeting she held with appellant on May 1, 2007, the claims examiner stated that if he wished to have the Office cover regular medical maintenance care of his feet, including ingrown toenails, he would have to submit medical evidence to establish a consequential injury. She noted:

> "Please refer to the items identified below and submit the requested evidence within 30 days of the date of this letter. Failure to submit this evidence within that time may result in the denial of your claim. We recommend that you show this letter to your physician (a copy of this letter has been forwarded to your physicians at your request) so that they will have a full understanding of what is needed.[3]
>
> "Submit a medical report from the physician who is treating you for this work injury and alleged consequential injury. The report should include: (a) a history of the injury including any similar problems which may have preexisted the condition for which you were treated; (b) the current clinical findings and results of any tests or x-rays performed; (c) the diagnosis(es) of the condition resulting from the injury and of any condition of the injured member or body part which preexisted this condition; (d) the physician's rationalized medical opinion on the causal relationship, if any, between the alleged work injury and the condition(s) for which you are now treated."

Appellant submitted a copy of several documents, including the Office's January 12, 2006 letter and Dr. Bahri's May 23, 2002 letter. He asserted that Dr. Makoff should have billed the Office for his services.

In an August 9, 2007 decision, the Office denied appellant's claim, finding that the coverage of ingrown toenails and maintenance of his feet was denied as the medical evidence did not demonstrate that the accepted conditions were related to the accepted conditions. The Office indicated that appellant did not provide the evidence requested in its May 1, 2007 letter.

In an August 21, 2007 letter, appellant requested reconsideration and resubmitted Dr. Bahri's May 23, 2002 letter together with documents concerning the installation of railings in his home and medical notes from 2006 and 2007 discussing his hip and leg conditions.

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[2] On March 8, 2007 the Office accepted that appellant sustained a torn meniscus of his right knee due to fall which was a consequence of his previously accepted employment injuries.

[3] The letter was sent to Dr. Makoff and Dr. Bahri.

In a September 12, 2007 decision, the Office denied further review of the merits pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

Section 8103(a) of the Act states in pertinent part: "The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation."[4]

The Board has found that the Office has great discretion in determining whether a particular type of treatment is likely to cure or give relief.[5] The only limitation on the Office's authority is that of reasonableness.[6] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[7]

In order to be entitled to reimbursement of medical expenses, it must be shown that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.[8] Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[9] It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent, intervening cause attributable to the employee's own intentional conduct.[10]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained work-related hip conditions and a torn meniscus of his right knee and authorized total arthroplasties of both hips. In August 2005 appellant sought the care of a podiatrist contending that his physical condition made it

[4] 5 U.S.C. § 8103.

[5] *Vicky C. Randall*, 51 ECAB 357 (2000).

[6] *Lecil E. Stevens*, 49 ECAB 673, 675 (1998).

[7] *Rosa Lee Jones*, 36 ECAB 679 (1985).

[8] *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

[9] *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

[10] *John R. Knox*, 42 ECAB 193, 196 (1990).

impossible for him to maintain care of his feet and toenails. He asserted that, due to his hip replacements, he could not bend or pull his legs into position to care for his feet.[11]

In a January 12, 2006 letter, the Office indicated that Dr. Makoff, a podiatrist, was designated as appellant's physician for podiatric care. However, it advised appellant that he needed to take certain actions before he could be reimbursed for his foot care. This included providing a detailed current medical report explaining the type of foot care needed and why it was necessitated by his accepted employment injuries. The Office's request in this regard is consistent with Board precedent concerning a claimant's burden to show entitlement to medical care, particularly where the claimant asserts that medical care is needed for one part of the body due to an accepted work-related condition in another part of the body.[12]

The Board finds that appellant did not submit sufficient medical evidence in support of his claim. Appellant submitted a May 23, 2002 letter in which Dr. Bahri, an attending Board-certified orthopedic surgeon, stated that he sought treatment with a podiatrist to care for his feet and toenails. Dr. Bahri noted, "He is unable to do this for himself due to his bilateral hip replacements. This is a reasonable request and I do believe it is medically necessary." However, this brief letter does not provide any depiction of appellant's medical condition at the time of his August 2005 claim or thereafter, does not clearly detail which specific aspects of appellant's foot condition required medical care and does not contain a rationalized medical opinion explaining how any specific foot condition was related to his accepted employment injuries.

The Board notes that appellant did not submit any current report from a podiatrist, including Dr. Makoff detailing any foot care that had been provided or explaining how such care was due to the effects of his accepted work-related injuries.[13] For these reasons, the Office's denial of appellant's request for reimbursement for foot care was reasonable and the Office did not abuse its discretion in denying appellant's claim.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[14] 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.[15] To be entitled to

[11] Appellant made a similar request in November 2001 but it is unclear whether the Office acted on this request at that time.

[12] *See supra* notes 4 through 10 and accompanying text.

[13] Appellant may wish to submit such evidence to the Office through the reconsideration process. *See* 5 U.S.C. § 8128; 20 C.F.R. §§ 10.605 to 10.607.

[14] Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[15] 20 C.F.R. § 10.606(b)(2).

a merit review of an Office decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.[16] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[17] The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record[18] and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.[19]

ANALYSIS -- ISSUE 2

In connection with his August 21, 2007 reconsideration request, appellant stated that Dr. Bahri's May 23, 2002 letter established his claim and submitted a copy of the letter. The submission of this argument and evidence would not require reopening of appellant's case for review on the merits in that the submission of argument or evidence which repeats or duplicates argument or evidence already in the case record does not constitute a basis for reopening a case.[20] Appellant had previously made the same argument and submitted a copy of Bahri's May 23, 2002 letter for the Office's consideration. He also submitted documents concerning the installation of railings in his home and medical notes from 2006 and 2007 discussing his hip and leg conditions. The submission of these documents would not require reopening of appellant's case for review on the merits in that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[21] These documents are not relevant to the main issue of the present case in that they do not provide a medical opinion on appellant's need for foot care due to effects of his accepted employment injuries.

Appellant has not established that the Office improperly denied his request for further review of the merits of its August 9, 2007 decision under section 8128(a) of the Act because the evidence and argument he submitted did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that the Office did not abuse its discretion in denying appellant's request for reimbursement for foot care. The Board further finds that the Office properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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[16] *Id.* at § 10.607(a).

[17] *Id*. at § 10.608(b).

[18] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

[19] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[20] *See supra* note 18 and accompanying text.

[21] *See supra* note 19 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' September 12 and August 9, 2007 decisions are affirmed.

Issued: October 23, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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