

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

G.R., Appellant

and

**DEPARTMENT OF THE NAVY, MILITARY
SEALIFT COMMAND, Norfolk, VA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 10-702
Issued: November 8, 2010**

Appearances:

*Stephen C. Swain, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 11, 2010 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated September 29, 2009 and January 5, 2010. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a right foot injury in the performance of duty on September 21, 2007; and (2) whether the Office properly refused to reopen appellant's case for reconsideration of her claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

Appellant, a 61-year-old naval cook, filed a claim for benefits on January 5, 2009, alleging that she fractured her right foot while departing her port of call from a launch ship on September 21, 2007.

By letter dated January 12, 2009, the Office advised appellant that she needed to submit additional factual and medical evidence in support of her claim. It asked her to explain why she did not report her alleged injury until January 5, 2009, when she allegedly sustained her injury on September 21, 2007. The Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, a diagnosis of the condition, and an opinion as to whether her claimed condition was causally related to her federal employment. It requested that she submit the additional evidence within 30 days. Appellant did not submit any additional evidence.

By decision dated February 17, 2009, the Office denied appellant's claim, finding that she failed to establish fact of injury. It noted that it had requested additional factual information to support her claim, but she failed to submit such evidence. The Office therefore denied compensation.

On March 3, 2009 appellant's attorney requested an oral hearing, which was held on June 17, 2009. Appellant submitted voluminous documentation in support of her claim, including medical reports, hospital notes, treatment notes, diagnostic test results and disability slips. These documents were received by the Office on June 29, 2009.

A January 4, 2008 computerized axial tomography (CAT) scan indicated that appellant had an acute fracture of the right toe, with multiple degenerative and diabetic-related conditions.

In a magnetic resonance imaging (MRI) scan report dated June 25, 2008, Dr. James C. Mosure, a Board-certified radiologist, stated that appellant had experienced pain and swelling in the right foot for the previous six months. He noted degenerative changes in the right foot, with a resolved fracture, mild inflammation of the deltoid ligament and moderate, chronic, but stable proximal plantar fascial thickening. Dr. Mosure advised that appellant also had diabetic neuropathic arthropathy, most pronounced at the mid foot, at the second tarsal metatarsal joint, along with distal posterior tibialis and peroneus longus tendinitis.

In an August 14, 2008 surgical report, Dr. William P. Grant, a podiatrist, indicated that he had performed a procedure involving a triple arthrodesis, navicular cuneiform arthrodesis, second metatarsal cuneiform arthrodesis, Achilles tendon lengthening, and chondrodiastasis of the ankle joint to correct a Charcot diabetic right foot with pain and degenerative changes of the right ankle joint. He advised that appellant had been treated for long-standing complaints of severe pain in her right foot; most of her ankle pain was attributable to traction from the deltoid and a collapsed arch. Dr. Grant stated that conservative measures had not ameliorated appellant's right foot pain for any length of time; therefore, she had decided to proceed with surgical intervention, including fusion of the degenerated and Charcot-inflamed bone, in an attempt to recreate the medial longitudinal arch and reposition the foot. He specifically stated that "no discussion of any traumatic event was provided."

In a report dated August 15, 2008, Dr. Allison Blanks, a Board-certified family practitioner, stated that appellant had a medical history significant for diabetes, hypertension, hyperlipidemia and moderate to severe aortic stenosis. She noted that Dr. Grant had performed right foot surgery on August 14, 2008 and indicated that there were no difficulties in the

perioperative period and was still employed as a food service worker with the employing establishment. Dr. Blanks stated that “no mention of a work injury is provided.”

Appellant submitted a June 23, 2009 affidavit, from Jason Sabatine, a coworker, who stated that he was present at the time the alleged September 21, 2007 incident occurred and that he witnessed appellant’s accident. Mr. Sabatine asserted that on this date he and appellant were returning to their ship and that appellant injured her foot while boarding the ship from their launch craft. He stated that appellant continued to carry out her cooking duties with a decided limp and had to seek medical attention; she had her leg wrapped until the voyage ended.

By decision dated September 29, 2009, an Office hearing representative affirmed the February 17, 2009 decision. He modified the decision and accepted that the September 21, 2007 incident occurred, as alleged. The Office hearing representative found, however, that appellant did not submit sufficient medical evidence to establish that the September 21, 2007 employment incident would have been competent to cause the claimed right foot fracture.

By letter dated November 13, 2009, appellant’s attorney requested reconsideration. Appellant did not submit any additional medical evidence.

By decision dated January 5, 2010, the Office denied appellant’s application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing that the essential elements of his or her 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.² 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.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

establish that the employment incident caused a personal injury.⁵ The medical evidence required to establish causal relationship is usually rationalized medical 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 medical 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

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁷

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor, the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁸ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS -- ISSUE 1

The Office accepted that appellant experienced right foot pain while disembarking a launch ship on September 21, 2007. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.⁹ Appellant has not submitted rationalized, probative medical evidence to establish that the September 21, 2007 employment incident would have been competent to cause the claimed injury.

Appellant submitted evidence from Drs. Mosure, Grant and Blanks. Dr. Mosure advised in his June 25, 2008 MRI scan report that appellant had experienced pain and swelling in the right foot and noted degenerative changes in the right foot, with a resolved fracture, mild inflammation of the deltoid ligament and moderate, chronic, but stable proximal plantar fascial thickening. He indicated that appellant also had diabetic neuropathic arthropathy, distal posterior tibialis and peroneus longus tendinitis. In an August 14, 2008 postoperative report, Dr. Grant stated that appellant had requested surgery for her right foot because conservative measures had failed to significantly reduce her severe, long-term pain. He therefore performed a fusion of the degenerated and Charcot-inflamed bone in an effort to recreate the medial longitudinal arch and reposition the foot. Dr. Grant stated, however, that appellant had not provided any history of a traumatic event concerning her right foot. Dr. Blanks stated findings on examination and

⁵ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

⁶ *Id.*

⁷ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁸ *Id.*

⁹ *Carlone*, *supra* note 4.

appellant's medical history and noted that there were no difficulties in the postoperative period. She also stated that appellant did not mention a work injury with regard to her right foot.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provides, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹⁰ Although Drs. Mosure, Grant and Blanks presented diagnoses of appellant's condition, these physicians did not address how these conditions were causally related to the September 21, 2007 work incident. The medical reports of record did not explain how medically appellant would have sustained a right foot injury because she was disembarking a launch craft on September 21, 2007. The medical opinions of record regarding causal relationship are of limited probative value in that they did not provide adequate medical rationale in support of their conclusions.¹¹ These physicians did not describe appellant's accident or how the accident would have been competent to cause the claimed condition. Drs. Grant and Blanks specifically stated that appellant did not mention any work injury in connection with her right foot fracture. There is, therefore, no rationalized evidence in the record that appellant's fractured right foot was work related. Therefore, appellant failed to provide a medical report from a physician that explains how the work incident of September 21, 2007 caused or contributed to the claimed right foot injury.

The Office advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the September 21, 2007 work accident would have caused the claimed injury. Accordingly, she did not establish that she sustained a fractured right foot in the performance of duty. The Office properly denied appellant's claim for compensation.¹²

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by constituting relevant and pertinent evidence not previously considered by the Office.¹³ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁴

¹⁰ See *Anna C. Leanza*, 48 ECAB 115 (1996).

¹¹ *William C. Thomas*, 45 ECAB 591 (1994).

¹² The Board notes that appellant submitted additional evidence to the record following the June 23, 2009 Office decision. The Board's jurisdiction is limited to a review of evidence which was before the Office at the time of its final review. 20 C.F.R. § 501(c).

¹³ 20 C.F.R. § 10.606(b)(1); see generally 5 U.S.C. § 8128(a).

¹⁴ *Howard A. Williams*, 45 ECAB 853 (1994).

ANALYSIS -- ISSUE 2

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. She has not submitted any new medical evidence with her request for reconsideration. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a right foot injury in the performance of duty. The Board finds that the Office properly refused to reopen her case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2010 and September 29, 2009 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: November 8, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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