

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

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**D.Y., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Chicago, IL, Employer**

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**Docket No. 08-1164  
Issued: October 6, 2008**

*Appearances:*  
*Appellant, pro se*  
*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 March 11, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 26, 2007 merit decision denying her occupational injury claim and a July 24, 2007 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an injury causally related to factors of her federal employment; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On March 16, 2007 appellant, a 50-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed neuroma, heel spurs and degenerative arthritis in both feet as a result of employment activities. In support of her claim, she submitted a March 1,

2007 note from Dr. Saera Arian-Saleem, a podiatrist, reflecting a diagnosis of “neuroma [both] feet.” Dr. Arian-Saleem indicated that appellant could return to work on March 2, 2007, but was restricted from standing for more than eight hours.

In a letter dated April 11, 2007, the Office informed appellant that the evidence submitted was insufficient to establish her claim. It advised her to submit details regarding the employment duties she believed caused or contributed to her claimed condition, as well as a comprehensive medical report from a treating physician, which contained symptoms, a diagnosis and an opinion with an explanation as to the cause of her diagnosed condition.

Appellant submitted a March 2, 2007 report from Dr. Arian-Saleem, who diagnosed “neuroma, second interspace, left worse than right.” Dr. Arian-Saleem stated that appellant had been treated for several years by another podiatrist, who had administered injections for foot pain, but that the pain invariably returned.

In reports dated March 29 and April 5, 2007, Dr. Arian-Saleem stated that he performed a surgical procedure (“excision neuroma, second interspace left foot”) on or about March 20, 2007. The record contains March 20, 2007 discharge instructions from Rush Oak Park Hospital, bearing an illegible signature of a nurse.

In a report dated April 12, 2007, Dr. Arian-Saleem diagnosed “neuroma, second digit, right foot” and “unknown lesion, right foot.” On April 17, 2007 he noted that appellant was experiencing pain in the second interspace of the right foot and recommended against any weight bearing on the right foot.

By decision dated June 26, 2007, the Office denied appellant’s claim on the grounds that she had not established a causal relationship between the diagnosed condition and accepted work-related events.

Appellant submitted an appeal request form dated July 17, 2007 requesting reconsideration of the Office’s June 26, 2007 decision. She did not submit any evidence or argument in support of her request.

By decision dated July 24, 2007, the Office denied appellant’s request for reconsideration, finding that the evidence submitted was insufficient to warrant a merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing the essential elements of her claim, including the fact that an injury was

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

sustained in the performance of duty as alleged<sup>2</sup> and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the 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 employment factors identified by the claimant.<sup>4</sup> The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to claimant's diagnosed condition. To be of probative value, 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.<sup>5</sup>

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

Appellant, a letter carrier, alleged that she developed a foot condition as a result of her work duties. The medical evidence submitted by her, which consisted of reports from Dr. Arian-Saleem and discharge instructions from Rush Oak Park Hospital, is insufficient to establish that her diagnosed medical condition was caused or aggravated by the alleged factors of her federal employment. Therefore, appellant has failed to meet her burden of proof.

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<sup>2</sup> *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

<sup>3</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

<sup>4</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

<sup>5</sup> *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

<sup>6</sup> *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 3 at 218.

Appellant submitted March 20, 2007 discharge instructions from Rush Oak Park Hospital, bearing an illegible signature of a nurse. Nurses do not qualify as “physicians” under the Act. Therefore, their opinions are of no probative value.<sup>7</sup>

Dr. Arian-Saleem’s reports lack probative value on several counts. His reports do not reflect an understanding of appellant’s job duties as they relate to the diagnosed condition. Moreover, none of Dr. Arian-Saleem reports contains an opinion as to the cause of appellant’s foot condition. Medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value.<sup>8</sup> Therefore, the reports are of diminished probative value and are insufficient to establish causal relationship.<sup>9</sup>

Appellant expressed her belief that her alleged condition resulted from her duties as a letter carrier. However, 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.<sup>10</sup> Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.<sup>11</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant’s responsibility to submit. Therefore, appellant’s belief that her condition was caused by the alleged work-related injury is not determinative.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the physician’s opinion, with medical reasons, on the cause of her condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how her claimed conditions were caused or aggravated by her employment, she has not met her burden of proof in establishing that she sustained an occupational disease in the performance of duty causally related to factors of employment.

### **LEGAL PRECEDENT -- ISSUE 2**

The Act<sup>12</sup> provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.

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<sup>7</sup> Section 8101(2) of the Act provides as follows: “(2) ‘physician’ includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.”

<sup>8</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>9</sup> *See Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

<sup>10</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>11</sup> *Id.*

<sup>12</sup> *See supra* note 1.

The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.<sup>13</sup>

The application for reconsideration 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.<sup>14</sup>

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits.<sup>15</sup> 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.<sup>16</sup>

### **ANALYSIS -- ISSUE 2**

Appellant's July 17, 2007 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant also failed to submit relevant and pertinent new evidence not previously considered by the Office. In fact, she submitted no medical or factual evidence in support of her request for reconsideration. Therefore, the Office properly determined that appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her July 17, 2007 request for reconsideration.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty. The Board further finds that the Office properly refused to reopen appellant's claim for merit review.

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<sup>13</sup> 20 C.F.R. § 10.605.

<sup>14</sup> *Id.* at § 10.606.

<sup>15</sup> *Donna L. Shahin*, 55 ECAB 192 (2003).

<sup>16</sup> 20 C.F.R. § 10.608.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 24 and June 26, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 6, 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