

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

C.H., Appellant)

and)

**DEPARTMENT OF DEFENSE, DEFENSE
LOGISTICS AGENCY, Texarkana, TX,
Employer**)

**Docket No. 08-172
Issued: April 10, 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
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 23, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 9, 2007, denying her occupational claim and an August 2, 2007 decision finding that her request for reconsideration was insufficient to warrant further merit review of the claim. Pursuant to 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 has established a foot condition causally related to factors of her federal employment; and (2) whether the Office properly determined that the July 11, 2007 application for reconsideration was insufficient to warrant merit review pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

On December 21, 2005 appellant, then a 44-year-old preservation servicer, filed an occupational claim (Form CA-2) alleging that she sustained foot injuries as a result of her federal employment. She alleged that excessive walking on stairs, concrete and uneven surfaces had contributed to a torn Achilles tendon and cyst in the right foot and bilateral heel spurs.

Appellant submitted treatment notes from Dr. Jeffrey DeHaan, an orthopedic surgeon, from May 4 to August 24, 2005. Dr. DeHaan reported that appellant had pain in the right plantar fascia and Achilles tendon, with arthritic changes in the talonavicular joint.

By decision dated February 13, 2006, the Office denied the claim for compensation. The Office found that the medical evidence was insufficient to establish the claim.

Appellant requested reconsideration and submitted additional evidence. In a report dated May 14, 2006, Dr. James Lillich, an orthopedic surgeon, indicated that appellant had undergone right foot surgery approximately six weeks earlier. He stated that he had advised appellant that prolonged periods of standing and walking may have aggravated her condition, causing some of the subtalar arthritis and posterior tibial tendon dysfunction.

In a report dated April 13, 2007, Dr. DeHaan stated that appellant's duties included making containers, delivering reports, gathering materials and loading pellets. He stated: "This activity caused pain in both her heels and in the mid part of her foot. She stated that this problem initiated from prolonged standing and walking on cement for long periods of time while performing her duties." Dr. DeHaan indicated that he referred appellant to Dr. Lillich for surgical intervention and opined: "the cause of her foot and ankle problems is a direct result of her job."

By decision dated May 9, 2007, the Office reviewed the case on its merits and denied modification of the February 13, 2006 decision. The Office found that the medical evidence was insufficient to establish the claim for compensation.

On July 11, 2007 appellant again requested reconsideration. She indicated that she was submitting an attached report from Dr. DeHaan, but the record does not include any medical evidence with the reconsideration request. In a decision dated August 2, 2007, the Office denied the application for reconsideration without reviewing the merits of the claim.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as

¹ 5 U.S.C. §§ 8101-8193.

alleged and that any specific condition or disability claimed is causally related to the employment injury.²

To establish that, an injury was sustained in the performance of duty, a claimant 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 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.³

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁴ A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.⁵ Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁶

ANALYSIS -- ISSUE 1

In this case, appellant alleged that walking on stairs, concrete and uneven surfaces contributed to her foot condition. The Office does not dispute that appellant's job involved the identified employment factors. The question is whether the medical evidence is sufficient to meet appellant's burden of proof to establish her claim for injury. It is her burden of proof to submit medical evidence that contains a diagnosis of a medical condition or conditions and a rationalized medical opinion on causal relationship between the diagnosis and the identified employment factors.

The medical evidence before the Office at the time of its May 9, 2007 merit decision is not sufficient to meet appellant's burden of proof. In an April 13, 2007 report, Dr. DeHaan did not provide a clear diagnosis. He referred to heel and mid foot pain and later noted foot and ankle problems, without additional explanation. With regard to a medical history, Dr. DeHaan noted that he had treated appellant for approximately four years, but did not discuss the course of treatment. As to a medical opinion on causal relationship, he did not provide any medical rationale to support his conclusion that "foot and ankle problems" were "the direct result of her job." Dr. DeHaan referred to appellant's statement that problems initiated from prolonged standing and walking on cement, without providing his own rationalized medical opinion. As

² 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

³ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁴ See *Robert G. Morris*, 48 ECAB 238 (1996).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *Id.*

noted, a rationalized medical report has a diagnosis, a complete factual and medical background and an opinion that explains the nature of the relationship between a diagnosed condition and the identified employment factors.

The remainder of the medical evidence is also of diminished probative value to the issue presented. Dr. Lillich, for example, speculated in a March 14, 2006 report that prolonged standing and walking may have aggravated appellant's condition, without providing additional detail or explanation.⁷ In the absence of probative medical evidence on the issue presented, appellant did not meet her burden of proof and the Office properly denied the claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

The Act 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.⁸ 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."⁹

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 evidence not previously considered by the Office.¹⁰

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. 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.¹¹

ANALYSIS -- ISSUE 2

Appellant indicated in her July 11, 2007 application for reconsideration that she was submitting additional medical evidence, but the case record does not contain any new medical

⁷ It is well established that medical opinions based on an incomplete history or opinions that are speculative in character are of diminished probative value. See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962).

⁸ 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.605 (1999).

¹⁰ *Id.* at § 10.606(b)(2).

¹¹ *Id.* at § 10.608.

evidence submitted prior to the August 2, 2007 decision.¹² There was, therefore, no relevant and pertinent evidence not previously considered by the Office submitted to the record. Appellant did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office.

Accordingly, the Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). In accord with 20 C.F.R. § 10.608, the Office denied the application for reconsideration without reopening the case for review on the merits of the claim.

CONCLUSION

Appellant did not submit sufficient medical evidence to establish a foot condition causally related to the identified employment factors. On application for reconsideration, she did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2) and the application was properly denied without merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 2 and May 9, 2007 are affirmed.

Issued: April 10, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹² While the record indicated evidence was received after the August 2, 2007 decision, the Board cannot review evidence on appeal unless it was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).