United States Department of Labor
Employees' Compensation Appeals Board

L.F., Appellant	)	
and	)	**Docket No. 10-2287**
	)	**Issued: July 6, 2011**
U.S. POSTAL SERVICE, LOS ANGELES PROCESSING & DISTRIBUTION CENTER, Los Angeles, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 7, 2010 appellant filed a timely appeal from a July 26, 2010 merit decision of the Office of Workers' Compensation Programs which denied her occupational disease claim and an August 24, 2010 decision which denied her request for reconsideration. Pursuant to the Federal Employees' Compensation Act[1] and 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 met her burden of proof to establish that she sustained an injury causally related to factors of her employment; and (2) whether the Office properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 21, 2010 appellant, then a 43-year-old carrier technician, filed an occupational disease claim alleging that she suffered from a bilateral foot injury as a result of walking up to five hours a day carrying mail. She explained that she endured walking over holes in lawns and uneven walkways for years and now the continuous walking caused aggravation in both her feet. Appellant reported that she first became aware of her condition and realized that it resulted from her work in March 2010. She also stated that she sustained a left ankle injury on April 14, 2010 while carrying mail but the report was delayed.[2]

In a supplemental statement, appellant provided a history of injury. She reported that she noticed symptoms in her feet since 2000 and was diagnosed with bilateral feet tendinitis. Appellant began experiencing similar symptoms in January 2008 and again in March 2010. She also described her employment duties as a mail carrier for approximately 15 years. Appellant explained that she was on her feet from 7:50 a.m. until 4:00 p.m. except for a 30-minute lunch break and two 10-minute breaks. She stated that the terrain in south central Los Angeles where she worked was rough and she consistently walked on uneven surfaces and lawns with holes, which put stress on her feet.

In a May 3, 2010 letter, the Office advised appellant that the evidence submitted was insufficient to support her claim for bilateral foot condition and requested additional information. It specifically asked her to describe in detail the employment-related activities, which she believed contributed to her condition, including how often and for how long she performed these duties on each occasion, her route duties, including street times, feet of mail per route, type of route, the development of her claimed condition, any previous arthritis or degenerative joint disease diagnoses and all activities outside of her federal employment. The Office also requested a comprehensive medical report from appellant's treating physician, which should include a description of appellant's symptoms, results of her examination and tests, diagnosis, treatment provided and a physician's opinion, based on medical rationale, regarding the cause of her condition.

In a May 24, 2010 letter, appellant responded to the Office's development letter. She explained that she served one of five routes each week on a rotating basis, which generally required 5 to 7.5 hours of walking. Appellant had 467 to 704 stops and received 12 to 18 feet of mail daily. She stated that she enclosed a copy of her job duties and responsibilities and of her current modified job duties and restrictions, but the Office did not receive these documents. Appellant also described the development of her condition. She noticed in 2000 that she would feel a tingling sensation coming up her legs after sitting for 30 minutes during her lunch break. In January 2008, appellant felt that both her feet were not getting enough support and was cast for orthotics. In March 2010, the symptoms returned. Appellant began changing her shoes from the required postal shoes because her feet were tired and felt hard to the surface after walking approximately three to four hours. When her symptoms worsened, she asked her supervisor if she could walk only three hours until she saw a physician on March 30, 2010. Appellant stated

[2] The record indicates that appellant filed a separate traumatic injury claim for the April 14, 2010 left ankle sprain injury. This claim has been accepted by the Office. The acceptance letter appears in the current case record, but appears to have been issued under the wrong claim number and placed in the wrong file.

that her symptoms were tolerable, but more aggravating at other times. She reported that her feet problems did not occur at home on a normal day even if she is on her feet all day, but only occurred after consistently walking three to four hours on uneven surfaces and rough terrain with the required postal shoes. Appellant was never diagnosed or treated for arthritis or degenerative joint disease, but was diagnosed with chondromalacia patella in her right knee. She also skated one to two hour sessions at least once a month.

In a letter dated June 1, 2010, appellant reported that she enclosed the information requested by the Office. She also stated that her physician's office informed her that the medical report was ready and would be sent soon. The Office did not receive any additional information.

By decision dated July 26, 2010, the Office denied appellant's claim on the grounds of insufficient medical evidence. It accepted that her work duties as a letter carrier required walking at least three hours a day, but noted that she failed to submit any medical evidence providing a medical diagnosis or explaining how her claimed condition resulted from factors of her employment.

On August 5, 2010 appellant submitted a request for reconsideration. In a supplemental statement, she explained that the medical evidence was incorrectly mailed to her employing establishment, instead of the Office.

Appellant submitted additional medical evidence by Dr. Gary Briskin, a podiatrist. In an April 20, 2010 treating physician's report, Dr. Briskin diagnosed her with lateral ankle instability, lateral ankle sprain, inflammation and pain in limb. He authorized appellant to return to modified work on April 20, 2010 with the restriction that she must wear an air cast and elevate her feet as much as possible. In an April 20, 2010 medical report, Dr. Briskin stated that she was seen in the office for complaints of left ankle discomfort. Appellant stated that on April 14, 2010 she was walking across a lawn at work, felt a pop and inverted the ankle joint. She was examined by a workers' compensation physician, diagnosed with a lateral ankle sprain with spasm and placed in an air cast ankle brace. Upon observation, Dr. Briskin observed tenderness along appellant's anterior talofibular ligament region, calcaneal fibular ligament in her left side and minimal edema in the left ankle and foot region. Appellant's greatest discomfort was noted in the base of her second metatarsal cuneiform joint. X-rays did not reveal any acute discomfort with weight-bearing. Dr. Briskin diagnosed appellant with lateral ankle instability, lateral ankle sprain, inflammation and pain. He opined that her injuries resulted from the April 14, 2010 incident.

In a decision dated August 24, 2010, the Office denied appellant's request for further review of the merits. It stated that, although she submitted medical reports that were not previously considered, the medical evidence referred to an April 14, 2010 traumatic injury for a left ankle sprain, which she filed under a separate claim. The Office determined that this medical evidence was not relevant to appellant's occupational disease claim for a bilateral foot condition.[3]

[3] In another August 24, 2010 letter, the Office accepted appellant's claim for a left ankle sprain. However, this acceptance letter appears to have been mistakenly placed in the wrong claim file.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative and substantial evidence[4] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[5] In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[7] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[9]

The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.[10]

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[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

[6] *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000); *D.U.*, Docket No. 10-144 (issued July 27, 2010).

[7] *D.I.*, 59 ECAB 158 (2007); *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-658 (issued October 22, 2009).

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[9] *B.B.*, 59 ECAB 234 (2007); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

[10] *Patricia J. Bolleter*, 40 ECAB 373 (1988).

ANALYSIS -- ISSUE 1

Appellant alleged that she suffered a bilateral foot condition due to walking five hours a day while delivering mail. The Office accepted that her employment duties required prolonged walking, but denied her claim on the grounds of insufficient medical evidence. The Board finds that appellant did not submit sufficient medical evidence to establish that she suffered a diagnosed bilateral foot condition causally related to factors of her employment.

The only medical evidence appellant submitted is two medical reports dated April 20, 2010 from Dr. Briskin. In a physician's progress report, Dr. Briskin diagnosed her with lateral ankle instability, lateral ankle sprain, inflammation and pain in limb. Similarly, in another medical report, he stated that on April 14, 2010 appellant injured her left ankle when she was walking across a lawn at work. Dr. Briskin did not provide a firm medical diagnosis for her bilateral foot condition or offer an opinion on whether her work duties caused or contributed to her foot, his report mentions a left ankle injury sustained on April 14, 2010. He did not discuss how appellant's letter carrier duties, particularly walking for three to five hours a day, caused or aggravated any foot condition. Rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician.[11] Thus, these medical reports are insufficient to establish appellant's claim.

On appeal, appellant contends that Dr. Briskins' office mistakenly sent the wrong medical evidence because it got the claims mixed up with her left ankle injury that occurred on April 14, 2010. As previously noted, however, the claimant has the burden to prove the essential elements of her claim, including whether her specific employment factors caused any diagnosed condition.[12] Accordingly, despite appellant's physician's alleged mistake, the Board finds that appellant did not meet her burden of proof to establish that she sustained a bilateral foot condition as a result of her employment.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether to review an award for or against compensation.[13] The Office's regulations provide that the Office may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his right through a request to the district Office.[14]

To require the Office to reopen a case for merit review pursuant to the Act, the claimant must provide evidence or an argument that: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously

[11] *Solomon Polen*, 51 ECAB 341 (2000); *J.J.*, Docket No. 09-27 (issued February 10, 2009).

[12] *E.A.*, 58 ECAB 677 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000); *D.U.*, *supra* note 6.

[13] 5 U.S.C. § 8128(a); *W.C.*, 59 ECAB 372 (2008); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010).

[14] 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[15]

A request for reconsideration must also be submitted within one year of the date of the Office decision for which review is sought.[16] A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If the Office chooses to grant reconsideration, it reopens and reviews the case on its merits.[17] If the request is timely but fails to meet at least one of the requirements for reconsideration, the Office will deny the request for reconsideration without reopening the case for review on the merits.[18]

ANALYSIS -- ISSUE 2

The Office issued a decision on July 26, 2010 denying appellant's occupational disease claim. On August 5, 2010 appellant requested reconsideration of the July 26, 2010 decision.

The issue on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring the Office to reopen the case for review of the merits of the claim. In her August 5, 2010 application for reconsideration, appellant did not show that the Office erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. The only evidence submitted were Dr. Briskin's medical reports regarding an April 14, 2010 left ankle injury, not a bilateral foot condition resulting from continuous walking as she alleged. Accordingly, these medical reports were not relevant to the issue of whether appellant suffered an occupational disease due to factors of her employment.[19]

The Board finds, therefore, that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant 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 submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, the Office properly denied merit review.

Appellant may submit new evidence or argument with a written request for reconsideration to the Office within one year of the last merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

[15] 20 C.F.R. § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

[16] *Id*. at § 10.607(a).

[17] *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

[18] *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

[19] *See R.D.*, Docket No. 10-1385 (issued March 2, 2011); *S.J.*, Docket No. 08-2048 (issued July 9, 2009).

CONCLUSION

The Board finds that appellant did not establish that she suffered a bilateral foot condition causally related to factors of her employment. The Board also finds that the Office properly denied her request for reconsideration pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the August 24 and July 26, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 6, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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