

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD D. HILL and U.S. POSTAL SERVICE,
POST OFFICE, Merrifield, Va.

*Docket No. 97-2825; Submitted on the Record;
Issued July 12, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof in establishing that he sustained injury to his feet that was causally related to factors of his federal employment.

On October 17, 1996 appellant, then a 44-year-old supervisor of transportation and network, filed a notice of traumatic injury and claim, alleging that he injured his feet while in the performance of duty on October 10, 1996. Appellant stopped work on October 10, 1996 and returned to work on November 12, 1996. On a duty status report appellant indicated that the bottoms of his feet were painful and numb from walking on a cement floor for six to eight hours per day. In a decision dated August 25, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record did not establish that an injury was sustained while in the performance of duty.

The Board has duly reviewed the case record on appeal and finds that this case is not in posture for decision.

A person who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim, including that he sustained an injury while in the performance of duty and that he had disability as a result.² In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure

¹ 5 U.S.C. §§ 8101-8193.

² *Daniel R. Hickman*, 34 ECAB 1220 (1983); *see* 20 C.F.R. § 10.110(a).

which is alleged to have occurred.³ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁴ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁵ The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.⁶

In the present case, the Office denied appellant's claim initially finding that appellant had not responded to its July 10, 1997 request for further information, including a description of injury and supporting evidence. In a handwritten note on the decision, the Office indicated that the diagnosis from appellant's attending physician was not sufficient to establish fact of injury as it was general and did not specify the periods of time appellant was required to walk on concrete. The note added that appellant failed to respond with details surrounding how his claimed injury occurred. However, all of the duty status reports and the medical reports submitted by appellant's physician indicate that appellant claimed his injury was the result of walking on concrete floors. On duty status reports dated October 27 and November 12, 1996, Dr. Mark K. Dollard, a podiatrist, indicated that appellant had tendinitis of both feet and tarsal tunnel neuritis due to job demands. He checked the box to indicate that the history of injury, "walking on concrete floor," corresponded to the diagnosed condition. The form also indicated that appellant walked six hours continuously and eight hours intermittently while at work. In a report dated May 14, 1997, Dr. Dollard diagnosed chronic tendinitis of the tibialis posterior tendons which was aggravated by extended walking and bounding at work. In a form report dated October 21, 1996 that was submitted after the Office's request for further information, Dr. Dollard noted that appellant's walking on a concrete floor in his postal job was the precipitating event and diagnosed tibialis posterior tendinitis. Appellant has submitted factual information that he sustained his injury due to walking on concrete floors and this information is not refuted. Appellant has also presented uncontradicted evidence which provides an inference that his diagnosed conditions of chronic tendinitis of the tibialis posterior tendons and tarsal tunnel neuritis are causally related to factors of his federal employment. While the reports by Dr. Dollard are not sufficiently rationalized to establish causal relationship, in the absence of medical evidence to the contrary they are sufficient to warrant further development of the evidence.⁷

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁴ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

⁵ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁶ *Manuel Garcia*, 37 ECAB 767 (1986).

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

On remand the Office should further develop the evidence by providing Dr. Dollard with a statement of accepted facts and requesting that he submit a rationalized medical opinion on whether appellant's condition of the feet is causally related to factors of his federal employment. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated August 26, 1996 is set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
July 12, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member