U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of TYSSON P. TOMLINSON and U.S. POSTAL SERVICE,
POST OFFICE, Alexandria, VA

*Docket No. 98-1652; Submitted on the Record;*
*Issued February 14, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on July 17, 1997, as alleged.

On July 17, 1997 appellant, then a 41-year-old city letter carrier, filed a claim for a traumatic injury alleging that on that date he experienced numbness and burning on the bottom of both feet while on his route. Appellant did not stop work.

By decision dated April 7, 1998, the Office of Workers Compensation Programs denied appellant's claim on the grounds that he did not establish fact of injury.

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury on July 17, 1997 causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing 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[2] and that an injury was sustained in the performance of duty.[3] These are essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *James E. Chadden Sr.*, 40 ECAB 312 (1988).

[4] *Delores C. Ellyet*, 41 ECAB 992 (1990).

In the instant case, the Office accepted that appellant was a federal employee, that he timely filed his claim for compensation benefits and that the workplace incident occurred as alleged. The question therefore, becomes whether this incident or exposure caused an injury.

In support of his claim, appellant submitted a medical report dated July 17, 1997 from Dr. Phillip W. Kempf, a Board-certified internist and his attending physician. Dr. Kempf noted that appellant worked as a letter carrier and that he had experienced "some burning sensation on the balls of both his feet, today while standing. He denies any significant trauma." Dr. Kempf diagnosed probable bilateral mild plantar fascitis, found that he could return to work and recommended that he purchase "some good new shoes with soft insoles." Dr. Kempf, however, did not address the causal relationship between appellant's employment activities on July 17, 1997 and the diagnosed condition of a bilateral plantar fascitis and thus his report is of little probative value.

In duty status reports dated July 1997 through November 1997, Dr. Kempf indicated that the diagnosed condition of plantar fascitis was due to the injury and checked "yes" that the history given by appellant corresponded to the history of injury provided on the form. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether appellant's disability was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[5] Therefore, Dr. Kempf's form reports are insufficient to establish appellant's claim for an injury on July 17, 1997.

Appellant further submitted office visit notes from Dr. Kempf dated July through November 1997. In these reports, Dr. Kempf diagnosed plantar fascitis, listed findings on examination and discussed appellant's work limitations. However, Dr. Kempf did not provide any opinion regarding causation, the relevant issue in the present case and thus his reports are insufficient to meet appellant's burden of proof.

In an office visit note dated December 5, 1997, Dr. Kempf diagnosed "bilateral plantar fascitis, resolving very slowly and has remained quite recalcitrant and chronic" and "metatarsalgia, right greater than left, resolving." He indicated that he was referring appellant to Dr. Jeffrey Coster, a podiatrist, for treatment. Dr. Coster submitted duty status reports dated December 1997 to January 1998 in which, he diagnosed a neuroma and plantar fascitis and listed work restrictions. Dr. Coster checked "yes" that the history given by appellant corresponded to the history of injury provided on the form, that of experiencing numbness and burning in his feet while casing mail. As discussed above, the Board has held that an opinion on causal relation which consists only of checking "yes" to a form question has little probative value without further detail and explanation.[6]

[5] *Lucrecia M. Nielson*, 41 ECAB 583 (1991).

[6] *Alberta S. Williamson*, 47 ECAB 569 (1996).

In a report dated February 19, 1998, Dr. Coster stated that he began treating appellant on December 11, 1997 after a referral from Dr. Kempf. He related, "apparently Dr. Kempf had been following [appellant] for an injury sustained on July 17, 1997 for continued foot pain, right greater than left. Dr. Kempf did inject him a few times as well as treat him with orthotics which were recalcitrant and, as such, referred him to us with the presumptive diagnosis of a post-traumatic neuroma." Dr. Coster noted that an ultrasound revealed "a neuroma in the third interspace of the right foot" and that appellant was scheduled for an excision neuroma. Dr. Coster, however, did not relate the neuroma to appellant's work activities on July 17, 1997 or other factors of his federal employment and thus his opinion is insufficient to meet appellant's burden of proof.

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.[7] To establish causal relationship, appellant must submit a physician's report in which the physician reviews that factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.[8] Appellant failed to submit such evidence and therefore, failed to discharge his burden of proof.[9]

The decision of the Office of Workers' Compensation Programs dated April 7, 1998 is hereby affirmed.

Dated, Washington, D.C.
February 14, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] *Willliam S. Wright*, 45 ECAB 498 (1993).

[8] *Id.*

[9] Subsequent to the Office's April 7, 1998 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c).