

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RUDY AROCHA and DEPARTMENT OF THE AIR FORCE,  
ROBINS AIR FORCE BASE, GA

*Docket No. 01-291; Submitted on the Record;  
Issued November 6, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a right ankle injury while in the performance of duty.

On September 11, 1998 appellant, then a 46-year-old sheet metal mechanic, filed a notice of traumatic injury alleging that on August 18, 1998, while working inside a C5 aircraft, he stepped on an electrical cord and twisted his right ankle. He was treated at the emergency room on August 26 and 31, 1998 for a right ankle sprain with a possible right foot infection and was placed on antibiotics.

In a treatment note dated September 3, 1998, a nurse reported that appellant did not recall a specific recent injury to his right ankle, but that he had been doing a lot of climbing on aircraft and that his ankles were sore because of climbing and walking. The nurse noted that appellant had had two past right ankle surgeries. Appellant noted that he had been on a fishing trip on August 22, 1998 and had to come home because of his swollen right ankle. The nurse determined that appellant had a right foot infection, which appeared to be resolving, and that his right foot was red and blue.

In a treatment note dated September 9, 1998, Dr. Ronald A. Nelson reported that appellant still had redness, swelling and pain in his right foot. He diagnosed "right foot infection: cellulitis vs. occult osteomyelitis" and referred him to an orthopedist for further evaluation.

In a report dated September 10, 1998, Dr. J.W. Spivey stated, "a couple of weeks ago appellant stepped on a cable and twisted his ankle and initially had no discomfort, but about five days later the pain became significant and spread into his ankle and he was unable to function."

In a follow-up report dated September 30, 1998, Dr. Spivey stated that a magnetic resonance imaging (MRI) scan indicated that appellant had "soft tissue swelling about the ankle

with joint effusion and soft tissue swelling about the foot with possible osteomyelitis of the first metatarsal phalanges joint.”

By letter dated November 4, 1998, the Office of Workers’ Compensation Programs requested that appellant submit additional information to support his claim.

In supplemental reports dated November 3 and 18, 1998, Dr. Spivey diagnosed “gout R foot” and noted: “patient stepped on electrical cord at work.”

In a report dated November 17, 1998, Dr. Spivey stated that appellant’s right sprained ankle had been compounded by an acute flair-up of his gout. In a report dated December 4, 1998, Dr. Spivey added, “I treated [appellant] for his injury sustained on August 18, 1998. It is felt by me that the bone spurs he has developed are a result of the injury he sustained on that date.”

By decision dated January 11, 1999, the Office denied appellant’s claim, finding that the medical evidence of record was insufficient to establish causal relationship.

By letter dated April 23, 1999, appellant requested reconsideration and submitted a March 22, 1999 report from Dr. Spivey who stated:

“I have again concluded that it is my medical opinion that [appellant] is going to have continuing medical difficulties with the foot/ankle area which was originally injured. That initial injury was base related with the swelling and pain being a product of inflammation. Additionally, subsequent MRI, bone scans and x-rays show that [appellant] has also developed bone spurs which will be with him for the rest of his life unless surgically treated at some subsequent date.”

He continued:

“In conclusion, it is my medical opinion, based upon my over 25 years of orthopedic practice, that the swelling is the product of his original injury.”

By decision dated July 13, 1999, the Office denied appellant’s request for modification of the prior decision, finding that appellant injured his right foot while on a fishing trip and that the injury was not work related.

By letter dated June 27, 2000, appellant requested reconsideration and submitted progress reports from Dr. Spivey and several witnesses’ statements. Darrell Harman stated, “On the 22<sup>nd</sup> of August 1998, on a fishing trip with some friends, appellant was visibly limping from a previously injured right foot. This injury was *not* obtained on our fishing trip.” (Emphasis in the original.)

Dennis Martinez stated:

“I [Mr.] Martinez was working the same aircraft as [appellant] on 18 Aug[ust] 1998. At the end of the shift he had informed me that he had twisted his ankle. I asked him if he needed to go to the clinic on base, he said that he could probably

work it out in a couple of days. As the week went by the ankle got worse, and it had swollen up. It was n[o]t till the following week that he decided to go to the clinic.”

DeWitt Williams stated:

“On or about 18 Aug[ust] 1998, I [Mr.] Williams watched [appellant] step on a large electrical cable and twist his ankle. It did hurt him but after a few minutes he shook it off and continued working. The next day he showed me how much it had swollen up but it had n[o]t turned black and blue. Although he could n[o]t put all of his weight on his right ankle, he continued to work. [Appellant] continued to work the rest of the week although his limp got a little worse each day. The last day I saw him at work was on that Friday, 21 Aug[ust] [19]98.”

Appellant also submitted a personal statement with his request for reconsideration, outlining the reasons he believed the Office’s July 13, 1999 decision was erroneous.<sup>1</sup>

In a merit decision dated August 28, 2000, the Office denied appellant’s request for modification of the prior decision.

The Board finds that this case is not in posture for decision.

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>2</sup> 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, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

In this case, the Board finds that the weight of the evidence supports appellant’s statement that on August 18, 1998 he stepped on an electrical cord and twisted his right ankle at work. The statements from colleagues and friends corroborate appellant’s assertion that his injury occurred at work and not on a fishing trip.<sup>5</sup>

The Board also finds that the medical evidence in the record is supportive of appellant’s claim.

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<sup>1</sup> Appellant also submitted duplicative evidence already contained in the record.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

<sup>5</sup> *See Constance G. Patterson*, 41 ECAB 206 (1989).

It is well established that proceedings under the Act<sup>6</sup> are not adversarial in nature<sup>7</sup> and while the claimant has the burden to establish entitlement to compensation the Office shares responsibility in the development of the evidence.<sup>8</sup> The Office has an obligation to see that justice is done.<sup>9</sup>

While Dr. Spivey's March 22, 1999 report is insufficient to discharge appellant's burden of proving by the weight of the reliable, substantial, and probative evidence that the swelling of his right foot was causally related to his original August 18, 1998 injury, it constitutes sufficient evidence to require further development of the record by the Office.

The Office should send the case record to Dr. Spivey with a request to provide a well-rationalized, detailed medical opinion, explaining how appellant's current right ankle condition is causally related to his August 18, 1998 employment injury. The Office should then make a *de novo* decision based on the augmented record.

The August 28, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, DC  
November 6, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *Id.*