

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

THOMAS A. BELLER, Appellant

and

**DEPARTMENT OF TRANSPORTATION,
CLEVELAND HOPKINS INTERNATIONAL
AIRPORT, Cleveland, OH, Employer**

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**Docket No. 05-683
Issued: July 6, 2005**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On January 25, 2005 appellant, through his attorney, filed a timely appeal from the January 30, 2004 merit decision of the Office of Workers' Compensation Programs, finding that he did not sustain an injury while in the performance of duty. Appellant also appeals the December 22, 2004 merit decision of an Office hearing representative which affirmed the Office's January 30, 2004 decision. The hearing representative found that appellant failed to establish that his claimed medical condition was caused by the May 1, 2003 employment incident. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury while in the performance of duty on May 1, 2003, as alleged.

FACTUAL HISTORY

On May 1, 2003 appellant, then a 47-year-old airway transportation systems specialist, filed a traumatic injury claim alleging that on that date he hurt the Achilles tendon of his right foot while pushing large boxes of equipment onto a pickup truck. In support of his claim, appellant submitted a September 5, 2003 request from Dr. John E. Cann, a podiatrist, to perform a magnetic resonance imaging (MRI) scan of his right foot. He also submitted an unsigned treatment note dated September 4, 2003 which contained the typed name of Dr. Jonathan O'Quinn, a podiatrist. This report revealed that appellant had been previously treated for osteoarthritis of the first metatarsophalangeal (MTP) joint. The report provided a history of the May 1, 2003 incident and appellant's resultant medical treatment. The report also provided findings on physical examination of appellant's feet and a diagnosis of retrocalcaneal exostosis of the right lower extremity based on an x-ray examination and hallus limitus of the right first MTP joint with osteoarthritis.

On September 15, 2003 appellant filed a claim alleging that he sustained a recurrence of disability (Form CA-2a). In an accompanying narrative statement, he described the May 1, 2003 incident and noted his continued pain and medical treatment.

By letter dated December 22, 2004, the Office advised appellant that his claim for the alleged May 1, 2003 injury was initially administratively allowed for medical treatment up to \$1,500.00. The Office further advised that, since appellant had filed a Form CA-2a, his claim must be formally adjudicated. The Office informed appellant that the evidence submitted was insufficient to establish his claim because he failed to submit a physician's opinion which addressed how his injury resulted in the diagnosed condition. The Office requested that he submit medical evidence regarding his preexisting right foot/leg condition and a detailed narrative medical report from his treating physician which addressed, among other things, a causal relationship between the diagnosed condition and the claimed injury.

In response, appellant submitted an unsigned treatment note dated May 2, 2003 which contained the typed name of Dr. Sheila M. Rice, a Board-certified internist. This treatment note revealed a history that appellant hurt his right heel at work on May 1, 2003. The primary diagnosis of a contusion of the right foot and a minor tear of the tendon/ligament was suspected. Appellant also submitted an unsigned x-ray report dated May 10, 2003 which contained Dr. Rice's typed name. An x-ray of appellant's right foot demonstrated large enthesophytes at the Achilles and plantar insertion of the calcaneus, no fracture or dislocation, unremarkable soft tissues, mild osteophyte formation in the distal tibia posteriorly and mild hypertrophic changes of the talonavicular joint.

By decision dated January 30, 2004, the Office found the medical evidence of record insufficient to establish that the claimed medical condition was causally related to the accepted May 1, 2003 employment incident. Appellant disagreed with the Office's decision and requested an oral hearing before an Office hearing representative by letter dated February 24, 2004.

In a December 22, 2004 decision, the hearing representative affirmed the Office's January 30, 2004 decision. The hearing representative found the medical evidence of record

insufficient to establish a causal relationship between the claimed medical condition and the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

To determine whether an employee actually sustained an injury in the performance of 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 in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure 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.⁴

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁵ 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.⁶ The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.⁷

¹ 5 U.S.C. §§ 8101-8193.

² *Charles E. Evans*, 48 ECAB 692 (1997).

³ *Michael E. Smith*, 50 ECAB 313 (1999); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁴ *Linda S. Jackson*, 49 ECAB 486 (1998).

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

⁶ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁷ *Charles E. Evans*, *supra* note 2.

ANALYSIS

There is no dispute in this case that on May 1, 2003 appellant was pushing large boxes of equipment onto a pickup truck while working at the employing establishment when he hurt the Achilles tendon in his right foot. The Board finds, however, the medical evidence of record insufficient to establish that the accepted incident caused an injury. Dr. Cann's request for an MRI scan of appellant's right foot does not address whether he sustained a medical condition causally related to the May 1, 2003 employment incident. Thus, the Board finds that Dr. Cann's request is insufficient to establish appellant's burden of proof.

The unsigned treatment notes and x-ray report which addressed appellant's right foot conditions contained the typed names of Dr. O'Quinn and Dr. Rice. The Board finds that this evidence is insufficient to establish appellant's burden of proof because it is not clear that it is from a physician.⁸ Therefore, the Board finds that as the treatment notes and x-ray report lack proper identification, they do not constitute probative medical evidence sufficient to establish appellant's burden of proof. As there is no rationalized medical evidence of record establishing that appellant hurt the Achilles tendon in his right foot in the performance of duty as alleged, he has failed to meet his burden of proof.

CONCLUSION

As appellant did not provide the necessary medical evidence to establish that he sustained an injury caused by the May 1, 2003 employment incident, the Board finds that he has failed to satisfy his burden of proof in this case.

⁸ *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (reports not signed by a physician lack probative value).

ORDER

IT IS HEREBY ORDERED THAT the December 22 and January 30, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 6, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member