United States Department of Labor
Employees' Compensation Appeals Board

N.R., Appellant	)	
and	)	**Docket No. 07-791**
	)	**Issued: July 11, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Lake Mary, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 30, 2007 appellant filed a timely appeal of a January 10, 2007 merit decision of the Office of Workers' Compensation Programs finding that he did not sustain an injury in the performance of duty on February 6, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction of the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury in the performance of duty on February 6, 2006.

FACTUAL HISTORY

On March 9, 2006 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim alleging that on February 6, 2006 he sustained a stress fracture on the caleneaus of his left foot while delivering mail on his route. He stated that he was getting out of his employing establishment long-life vehicle (LLV) on an uneven road due to the installation of sewer lines.

On his claim form and, by letter dated March 10, 2006, the employing establishment controverted the claim.

By letter dated March 21, 2006, the Office requested that the employing establishment submit a copy of appellant's position description and physical requirements of the position. It also requested that the employing establishment explain how appellant's actual work duties varied from the official position description. Also on March 21, 2006 the Office advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the factual and medical evidence he needed to submit to establish his claim.

In an undated letter received by the Office on April 11, 2006, appellant attributed his left foot condition to getting in and out of his LLV on February 6, 2006. He also stated that on February 8, 2006 he called in sick at work and sought medical treatment from Dr. Dacia Milescu, a podiatrist. Dr. Milescu diagnosed possible Achilles tendinitis and prescribed medication and ordered a magnetic resonance imaging (MRI) scan. Appellant returned to work on February 9, 2006 based on Dr. Milescu's advice. The employing establishment advised him that he could not deliver mail on his route in an open shoe until it received clearance from the district safety office.

A March 6, 2006 prescription note of Dr. Christopher C. Mason, a podiatrist, stated that appellant should remain off work for two weeks due to a fracture. His treatment notes dated February 8 to March 21, 2006 addressed appellant's left foot problems and found that he sustained a calcaneal stress fracture and Achilles tendinitis with a retrocalcaneal heel spur of the left foot. Dr. Mason's February 9, 2006 disability certificate stated that appellant would be out of work for three weeks. He recommended that appellant completely engage in nonweight-bearing activity due to a stress fracture. In a March 27, 2006 disability certificate, Dr. Mason released appellant to return to full-duty work with no restrictions.

By decision dated April 27, 2006, the Office found the evidence of record insufficient to establish that appellant sustained an injury causally related to the February 6, 2006 employment incident. In a letter dated May 18, 2006, appellant requested an oral hearing before an Office hearing representative.

In a report dated September 18, 2006, Dr. Mason stated that he treated appellant for a calcaneus stress fracture which he believed was causally related to his work environment. He stated that, if requested to do so, "I will be happy to substantiate this and provide you with additional progress notes and continuing care records." Dr. Simon Dorton, a Board-certified radiologist, performed an MRI scan of appellant's left ankle on February 9, 2006. He reported tendinosus and a partial tear in the most distal aspect of the Achilles tendon near its insertion on the calcaneus. He also reported marrow space edema within the dorsal calcaneus deep to the Achilles tendon insertion consistent with stress response. Within the dorsal aspect of the calcaneus a more linear area of decreased T1 and increased T2 signal were seen suggestive of a trabecular stress fracture. Dr. Dorton recommended clinical correlation, conservative treatment and a follow-up MRI scan to ensure resolution. He found an 11 millimeter spur at the dorsal calcaneus at the site of the Achilles tendon insertion. Dr. Dorton telephoned a wet reading to Dr. Mason.

By decision dated November 30, 2006, an Office hearing representative set aside the April 27, 2006 decision and remanded the case for further development. The hearing representative found the evidence sufficient to establish that the February 6, 2006 incident occurred as alleged. He also found that Dr. Mason's September 18, 2006 opinion regarding causal relation, although not rationalized, was uncontroverted and sufficient to require further development of the medical evidence.

In a letter dated December 5, 2006, the Office requested that Dr. Mason provide a rationalized medical opinion explaining the causal relationship between appellant's employment incident and left foot condition. It also requested that he discuss appellant's prior and current medical history with regard to his foot conditions and whether nonwork events may have been the cause or contributed to his left foot condition. The Office provided Dr. Mason with 30 days to provide the requested information. He did not respond within the allotted time period.

By decision dated January 10, 2007, the Office found the evidence of record insufficient to establish that appellant sustained an injury due to the February 6, 2006 employment incident.

LEGAL PRECEDENT

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 filed within applicable time limitation; that an injury was sustained while 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.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.[3]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.[4] 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.[5]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

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

[5] *Linda S. Jackson*, 49 ECAB 486 (1998).

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[6] 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.[7] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[8]

ANALYSIS

The record supports that on February 6, 2006 appellant was getting in and out of his LLV while in the performance of duty. The Board finds, however, that the medical evidence of record is insufficient to establish that the accepted incident caused a left foot condition.

In a September 18, 2006 report, Dr. Mason opined that appellant's left foot stress fracture was caused by his employment. However, he failed to provide any medical rationale explaining how or why the diagnosed foot condition was caused by appellant exiting his vehicle on February 6, 2006. The Board finds that Dr. Mason's report is insufficient to establish appellant's claim.

On December 5, 2006 the Office requested that Dr. Mason clarify his September 18, 2006 opinion by providing medical rationale explaining the causal relationship between appellant's left foot condition and his employment. Although Dr. Mason indicated on September 18, 2006 that he would further address the basis for his September 18, 2006 medical opinion, he failed to do so.

Appellant did not submit any additional medical evidence establishing a causal relationship between his left foot condition and the accepted February 6, 2006 employment incident. The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a left foot injury in the performance of duty on February 6, 2006. Therefore, he failed to meet his burden of proof.[9]

CONCLUSION

The Board finds that appellant did not provide the necessary medical evidence to establish that he sustained an injury caused by the February 6, 2006 employment incident.

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[6] *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).

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

[8] *Charles E. Evans*, 48 ECAB 692 (1997).

[9] The Board notes that on appeal appellant raised the issue regarding reimbursement for 310 hours of sick and annual leave he used for his left foot condition. As the Office has not issued a final decision on this issue, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board