United States Department of Labor
Employees' Compensation Appeals Board

S.W., Appellant	)	
and	)	**Docket No. 07-847**
	)	**Issued: July 13, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Pottstown, PA, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 6, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 18, 2006 denying his traumatic injury claim. 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 sustained a traumatic injury while in the performance of duty on October 30, 2006.

FACTUAL HISTORY

On October 31, 2006 appellant, a 30-year-old letter carrier, filed a traumatic injury claim (Form CA-1), alleging that on October 30, 2006 he sustained right shin pain while walking his route. The employing establishment controverted the claim, contending that appellant had not notified the place or time of injury and had failed to establish a causal relationship between the alleged employment incident and his diagnosed condition.

Appellant submitted several reports from Dr. James Stephenson, a treating physician. In a work status sheet dated October 30, 2006, Dr. Stephenson provided a diagnosis of right anterior tibialis tendinitis and recommended modified duty. In an accompanying physical capacities evaluation form, he stated that appellant could use his right lower extremity from one to three hours per day. On November 2, 2006 Dr. Stephenson opined that appellant could work with restrictions from November 2 to 9, 2006. Examination of the ankle, skin and peripheral vascular system revealed full range of motion on inversion, eversion, dorsiflexion and plantar flexion without pain. Anterior and posterior drawer signs of the ankle were negative. There was no tenderness on compression of the distal tibia and fibula above the ankle mortise and no skin swelling or discoloration. Appellant was able to heel and toe walk without pain. Dorsalis pedis and posterior tibial artery pulses were intact and there was good capillary refill of the great and little toes. Dr. Stephenson found no tenderness over the medial or lateral malleolus Lisfranc's joint or over the base of the fifth metatarsal. He noted that the right anterior cortibialis tendon was less tender and swollen on palpation. Induration over the anterior tibialis tendon had cleared. In a November 2, 2006 duty status report, Dr. Stephenson indicated, by placing a checkmark in the "yes" box, that appellant's diagnosed condition was due to an October 30, 2006 injury. Appellant also submitted a copy of a job description for a city carrier.

On November 17, 2006 the Office notified appellant that the evidence submitted was insufficient to establish his claim and advised him to provide additional documentation, including a firm diagnosis and a physician's opinion as to how his injury resulted in the diagnosed condition. It asked appellant to provide a detailed description as to how the injury occurred, including the cause of the injury and statements from any witnesses or other documentation supporting his claim.

In a November 9, 2006 report, Philip Marchiano, a nurse practitioner, stated that appellant had a good range of motion of his right knee and ankle. He found no deformity, swelling or tenderness. In a report of an initial evaluation dated October 30, 2006, Dr. Stephenson indicated that appellant was seen on that date "with anterior tibial pain with increasing severity today." Noting that appellant's route involved many hills and that he had ambulated six days per week for the past several weeks, Dr. Stephenson diagnosed right anterior tibialis tendinitis. Examination of appellant's right lower leg and ankle, skin and peripheral vascular system revealed pain in the anterior tibial region with resisted dorsiflexion. Dr. Stephenson found no tenderness on compression of the distal tibia and fibula above the ankle mortise. Appellant had full range of motion on inversion and eversion and plantar flexion without pain. There was tenderness to palpation over the anterior compartment with thickened tendons palpable. Dr. Stephenson found thickened tendon skin over the distal anterior compartment with peau d'orange appearance.

On November 26, 2006 appellant submitted responses to the Office's inquiries. He stated that on the date of injury he felt discomfort in his shin as he began his route and that the pain increased until he began to feel a "grinding" or "stretching" sensation with each step that he took. Immediate effects of the injury included a growing sharp pain and grinding sensation in the lower part of his shin.

By decision dated December 18, 2006, the Office found that appellant had established that the claimed work event occurred, *i.e.*, that he had walked his route on October 30, 2006.

However, the Office denied appellant's claim finding that he failed to provide a rationalized medical opinion to support a causal relationship between the accepted event and his diagnosed condition.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[1] provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[3]

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his 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 or specific condition for which compensation is claimed is causally related to the employment injury.[4] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," consisting of two components which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[5]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[6] An award of compensation may not be based on appellant's belief of causal relationship.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is

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[1] 5 U.S.C. § 8101 *et seq.*

[2] 5 U.S.C. § 8102(a).

[3] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[4] *Robert Broome*, 55 ECAB 339 (2004).

[5] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). *See* 20 C.F.R. § 10.5(q), (ee).

[6] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[7] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

sufficient to establish a causal relationship.[8] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[9]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[10]

ANALYSIS

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, namely that appellant walked his route on October 30, 2006. The issue, therefore, is whether he has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy his burden of proof.

Contemporaneous medical evidence of record includes reports from Philip Marchiano, a nurse practitioner. A nurse practitioner is not a physician under the Act. Therefore, his reports do not constitute competent medical evidence to support appellant's claim for medical benefits.[11]

Dr. Stephenson's reports are insufficient to establish a causal relationship between the accepted employment incident and appellant's diagnosed condition. His October 30, 2006 reports fail to provide an opinion as to the cause of appellant's condition and, therefore, lack probative value. Dr. Stephenson noted that appellant's route involved many hills and that he had ambulated six days per week for the past several weeks. However, he did not state or explain how appellant's activities at work on October 30, 2006 caused his diagnosed condition. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[12] Similarly, Dr. Stephenson's narrative report, work status report, worksheet and physical capacities evaluation form dated November 2, 2006 lack probative value, as they do not contain

[8] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also id.* at 218.

[9] 20 C.F.R. § 10.303(a).

[10] *John W. Montoya*, 54 ECAB 306 (2003).

[11] Section 8101(2) of the Act provides as follows: (2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[12] *Michael E. Smith*, 50 ECAB 313 (1999).

an opinion on causal relationship. The only medical report of record containing an opinion as to the cause of appellant's diagnosed condition was Dr. Stephenson's November 2, 2006 duty status report. In response to the question as to whether appellant's condition was caused or aggravated by an employment activity, he placed a checkmark in the "yes" box. A mere checkmark or affirmative notation in response to a form question on causal relationship is not sufficient to establish a claim.[13] Dr. Stephenson's blanket assertion that appellant's condition was related to the employment injury is not sufficient to establish a causal relationship. He is required to explain how appellant's condition resulted from his activity of walking his route on October 30, 2006.[14]

In this case, there is no physiological evidence of record establishing a causal relationship between a diagnosed condition and the accepted October 30, 2006 work-related incident. The Office advised appellant of the type of medical evidence required to establish his claim; however, he failed to submit such evidence. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.[15] To establish causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination and appellant's medical history, explain how these employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.[16] Appellant failed to submit such evidence and, therefore, failed to satisfy his burden of proof.

CONCLUSION

Appellant has not met his burden of proof to establish that he sustained a traumatic injury to his shin in the performance of duty on October 30, 2006.

[13] *See Gary J. Watling*, 52 ECAB 278 (2001).

[14] *Mary A. Ceglia*, 55 ECAB 626 (2004).

[15] *Patricia J. Glenn*, 53 ECAB 370 (2001).

[16] *Robert Broome*, *supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board