

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

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**C.J., Appellant**

**and**

**U.S. POSTAL SERVICE, R.W. JENKINS  
STATION, Tulsa, OK, Employer**

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**Docket No. 08-304  
Issued: May 7, 2008**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 7, 2007 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated December 12, 2006 and August 3, 2007, finding that he did not sustain an injury on October 25, 2006 in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction of the merits of this appeal.

**ISSUE**

The issue is whether appellant has established that he sustained an injury on October 25, 2006 in the performance of duty, as alleged.

**FACTUAL HISTORY**

On October 26, 2006 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim alleging that on October 25, 2006 he experienced pain in his left foot while walking up steps to a house. He did not stop work.

Appellant submitted reports covering the period October 27 through November 1, 2006 from his physical therapists, regarding treatment of a lumbar strain and synovitis of the foot. In

reports dated October 26 and November 1, 2006, Bradley D. Helton, a physician's assistant, stated that appellant sustained a lumbar strain and synovitis of the foot that was caused or aggravated by an employment activity.

By letter dated November 8, 2006, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the additional factual and medical evidence he needed to submit.

In an October 26, 2006 report, Mr. Helton reiterated his prior diagnoses and restrictions. He opined that the October 25, 2006 incident was more likely than not work related.

The November 15 and 29, 2006 medical reports of Dr. Harold L. Battenfield, an orthopedic surgeon, stated that the date of appellant's injury was October 25, 2006. He opined that appellant sustained synovitis of the left foot. On November 29, 2006 Dr. Battenfield released appellant from his care and stated that he could return to regular-duty work.

By decision dated December 12, 2006, the Office denied appellant's claim on the grounds that he did not establish that the claimed employment incident occurred at the time, place and in the manner alleged.

On January 2, 2007 the Office received a December 6, 2006 letter in which appellant further described the alleged October 25, 2006 injury. While on his route, he went up the steps of a house to deliver mail and experienced very sharp pain at the bottom of his left foot. Appellant noted that he had previously filed an assigned claim number 162112087, for synovitis of the right foot.

An unsigned report dated October 26, 2006, indicated that on October 25, 2006 appellant sustained a left foot injury while walking.

In a November 6, 2006 report, Mr. Helton reiterated his prior diagnosis of lumbar strain and synovitis of the foot and appellant's restrictions.

On December 28, 2006 appellant requested an oral hearing before an Office hearing representative regarding the December 12, 2006 decision.

In reports dated March 30, 2007, Dr. Joseph A. Blough, a Board-certified family practitioner, reviewed a history that on October 25, 2006 appellant was climbing up steps while delivering mail when he immediately experienced pain in his lower back and left foot. He also provided a history of appellant's medical treatment and family, social and employment background. On physical examination of the thoracic and lumbar spines, Dr. Blough reported decreased range of motion and strength in all planes and trigger points that were palpable over the bilateral paravertebral musculature. He noted a straight leg raising test on the left at 30 degrees with pain radiating into the bilateral hips and a negative straight leg raising test on the right. Loss of sensation to monofilament testing was noted over the left anterior leg and left foot when compared to the right. Weakness was demonstrated with bilateral hips with resisted flexion. Weakness was demonstrated with resisted flexion and extension bilaterally with regard to appellant's hips. On examination of the right and left feet, Dr. Blough reported decreased range of motion and strength in all planes. Tenderness to palpation was demonstrated over the

bilateral plantar aspects of the feet. Instability was demonstrated bilaterally with single limb standing. Weakness was demonstrated against resisted flexion and extension of the bilateral great toes. Loss of sensation to monofilament testing was noted. No swelling or ecchymosis was demonstrated. Tenderness to palpation was demonstrated in the mid-foot and forefoot bilaterally. Anterior drawer test was negative.

Dr. Blough diagnosed appellant with lumbar spine sprain/strain with trigger point formation, lumbar radiculopathy, left plantar fasciitis and left foot synovitis. He opined that appellant's lumbar spine and left foot/ankle conditions were a result of the October 25, 2006 incident. Dr. Blough stated that appellant's ongoing complaints of pain, weakness and instability in the lumbar spine and left foot/ankle were supported by his clinical examination. He provided a treatment plan and work restrictions.

By decision dated August 3, 2007, an Office hearing representative affirmed the December 12, 2006 decision, as modified. He found the evidence of record sufficient to establish that the alleged incident occurred at the time, place and in the manner alleged. However, the medical evidence was insufficient to establish that appellant sustained a medical condition causally related to the accepted employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</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 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> In order to meet his burden of proof to establish the fact that he sustained an injury in the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

<sup>4</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

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.<sup>5</sup>

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

### ANALYSIS

The record supports that on October 25, 2006 appellant was walking up steps while delivering mail on his route. With respect to whether he sustained an injury on October 25, 2006, the Board finds that the medical evidence is sufficient to require further development of the claim.

Dr. Blough's March 30, 2007 reports reviewed a history of the October 25, 2006 employment incident. He provided detailed findings on physical examination. Dr. Blough diagnosed appellant with lumbar spine sprain/strain with trigger point formation, lumbar radiculopathy, left plantar fasciitis and left foot synovitis. He opined that appellant's lumbar spine and left foot/ankle conditions were a result of the October 25, 2006 employment incident. Dr. Blough explained that appellant's ongoing complaints of pain, weakness and instability in the lumbar spine and left foot/ankle were supported by his findings on clinical examination.

The Board finds that Dr. Blough's reports are sufficient to require further development of the claim. The medical reports reflect an accurate history of the accepted employment incident and noted, with explanation, why appellant's back and left foot conditions were caused by the October 25, 2006 employment incident. While Dr. Blough's reports are not fully rationalized to discharge appellant's burden of proof as they do not explain how his clinical findings establish a causal relationship between his conditions and the accepted employment incident, they raise an uncontroverted inference of causal relationship.<sup>9</sup>

On remand, the Office should prepare a statement of accepted facts and refer appellant, along with his medical records, for a second opinion examination to obtain a rationalized opinion as to whether the October 25, 2006 employment incident caused or aggravated his current back

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<sup>5</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>6</sup> *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).

<sup>7</sup> *Lourdes Harris*, 45 ECAB 545 (1994); *see* *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>8</sup> *Charles E. Evans*, 48 ECAB 692 (1997).

<sup>9</sup> *John J. Carlone*, *supra* note 6.

and left foot conditions. Following such further development as deemed necessary, the Office shall issue an appropriate final decision on this issue.

**CONCLUSION**

The Board finds that the case is not in posture for decision as to whether appellant sustained an injury on October 25, 2006 in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 3, 2007 and December 12, 2006 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision.

Issued: May 7, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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