

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARRY G. HARLESS, SR. and DEPARTMENT OF DEFENSE,
DEFENSE GENERAL SUPPLY CENTER, Richmond, Va.

*Docket No. 96-1743; Submitted on the Record;
Issued July 10, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury on January 6, 1993 in the performance of duty causally related to factors of his federal employment.

On January 6, 1993 appellant, then a 52-year-old equipment inspector, filed a claim for compensation benefits alleging that on that date he twisted his left ankle when he stepped on a rock after inspecting a truck at work.

In a form report dated March 17, 1994, Dr. Rose M. McGlade, a family practitioner and an employing establishment physician, related that appellant had been experiencing pain in his left ankle and left lower leg since the incident at work on January 6, 1993 and she diagnosed a recurrence of contusion and sprain of the left ankle and foot.

In a report dated April 4, 1994, Dr. Lawrence M. Shall, a Board-certified orthopedic surgeon, related that appellant had twisted his left ankle one year previously and he provided findings on examination and noted that x-rays of the left ankle were normal. He recommended nerve conduction studies and an electromyogram (EMG) to rule out tarsal tunnel syndrome and noted that appellant was continuing to work regular duty.

In a report dated April 15, 1994, Dr. Shall provided findings on examination, diagnosed pain in the left ankle and recommended an EMG. He checked the block marked "yes" indicating that the condition was causally related to the work incident on January 6, 1993.

By decision dated June 30, 1994, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that he had sustained an injury in the performance of duty.

Subsequent to the Office's decision, additional medical evidence was received.

In a report dated January 6 1993, Dr. McGlade noted that on that date appellant stepped on a rock and twisted his ankle and felt pain in his ankle and lower leg.

In a clinical note dated January 6, 1993, Dr. McGlade related that appellant had twisted his ankle when he stepped down and landed on a rock. She noted that the skin was not broken but the ankle was slightly swollen.

In clinical notes and a form dated March 25, 1993, relating that appellant was complaining of pain in his left ankle, which he attributed to the January 1993 incident, Dr. McGlade indicated possible arthritis in the left ankle and foot and recommended an x-ray.

In notes dated March 17, 1994, Dr. McGlade related that appellant was having pain in his left ankle and left foot, which he attributed to the January 1993 incident. She noted that appellant would consult with his own physician.

In a report dated March 30, 1995, Dr. Shall stated that in previous notes he had indicated that appellant had injured his ankle on January 6, 1993 and had ongoing complaints of pain, numbness and tingling in the bottom of the foot and that his presumptive diagnosis was that of tarsal tunnel syndrome, which required further neurodiagnostic studies to confirm or deny. Regarding the issue of causal relationship, Dr. Shall stated:

“Please understand that this is purely historical. If [appellant] states that the ankle was symptom free prior to the injury and that the complaints thereafter were persistent to the date which I evaluated the ankle, then the ankle complaints were as a result of the original injury, in this case of January 6, 1993.”

By letter dated October 15, 1995, appellant requested reconsideration of the denial of his claim.

By decision dated March 28, 1996, the Office denied modification of its June 30, 1994 decision.

The Board finds that appellant has met his burden of proof to establish that he sustained an injury to his left ankle on January 6, 1993, but that he has failed to establish any disability causally related to that injury or that his claimed medical condition in 1994 was causally related to the 1993 injury.

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.² These are the

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the “fact of injury” has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵ The term “injury” as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.⁶

In this case, appellant alleged that he sustained an injury to his left ankle on January 6, 1993, when he twisted it after stepping on a rock. In support of his claim, he submitted notes dated January 6, 1993, in which Dr. McGlade, a family practitioner and an employing establishment physician, noted that on that date appellant stepped on a rock and twisted his ankle and felt pain in his ankle and lower leg. She noted that the skin was not broken but the ankle was slightly swollen. These notes, support appellant’s claim of an injury to his left ankle on January 6, 1993 as there is an objective finding of swelling in the ankle, in addition to the subjective complaints of pain. The record shows that appellant promptly sought medical treatment on the date of his claimed injury and there is no evidence contradictory to his claim of an injury sustained on that date. However, there is no evidence of record that appellant was disabled from work for any period due to the January 6, 1993 injury.

In clinical notes and a form dated March 25, 1993 relating that appellant was complaining of pain in his left ankle attributed to the January 1993 incident, Dr. McGlade indicated possible arthritis in the left ankle and foot and recommended an x-ray. However, Dr. McGlade did not provide a rationalized opinion explaining how the arthritis condition was caused or aggravated by the January 6, 1993 employment injury. Nor did she indicate that appellant was disabled. Therefore, this report does not establish that appellant had any medical condition or disability on March 1993 causally related to the January 1993 employment injury.

In notes dated March 17, 1994, Dr. McGlade related that appellant was having pain in his left ankle and left foot, which he attributed to the January 1993 incident. As she provided no diagnosis and no medical rationale explaining how the left ankle and left foot complaints in 1994 were causally related to the 1993 employment injury, this report does not discharge appellant’s

³ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

⁴ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁵ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁶ *Elaine Pendleton*, *supra* note 2; 20 C.F.R. § 10.5(a)(14).

burden of proof to establish that his medical condition in 1994 was due to the 1993 employment injury.

In a report dated April 4, 1994, Dr. Shall, a Board-certified orthopedic surgeon, related that appellant had twisted his left ankle one year previously and he provided findings on examination and noted that x-rays of the left ankle were normal. He recommended nerve conduction studies and an EMG to rule out tarsal tunnel syndrome and noted that appellant was continuing to work regular duty. As Dr. Shall did not provide a definite diagnosis of appellant's condition nor any medical rationale linking the problems in 1994 to the 1993 employment injury, this report does not support appellant's claim of an employment-related left ankle medical condition in 1994.

In a report dated April 15, 1994, Dr. Shall provided findings on examination, diagnosed pain in the left ankle and recommended an EMG. He checked the block marked "yes" indicating that the condition was causally related to the work incident on January 6, 1993. The Board has held that an opinion on causal relationship, which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.⁷ Without any explanation or rationale, such a report has little probative value and is insufficient to establish causal relationship.⁸

In a report dated March 30, 1995, Dr. Shall stated that in previous notes he had indicated that appellant had injured his ankle on January 6, 1993 and had ongoing complaints of pain, numbness and tingling in the bottom of the foot and that his presumptive diagnosis was that of tarsal tunnel syndrome, which required further neurodiagnostic studies to confirm or deny. He stated that appellant's complaints in 1994 were causally related to the 1993 employment injury, because he continued to have pain through that time. An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.⁹ The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.¹⁰ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.¹¹ While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,¹² neither can such opinion be speculative nor equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the

⁷ *Deborah S. King*, 44 ECAB 203 (1992); *Donald W. Long*, 41 ECAB 142, 146 (1989).

⁸ *Id.*

⁹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

¹⁰ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

¹¹ *Ern Reynolds*, 45 ECAB 690 (1994); *James Mack*, 43 ECAB 321 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

¹² *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹³ The report of Dr. Shall does not meet this criteria and is, therefore, insufficient to establish that appellant sustained any medical condition or disability in 1994 causally related to the 1993 employment injury.

The decision of the Office of Workers' Compensation Programs dated March 28, 1996 is modified to reflect that appellant did sustain an employment-related injury to his left ankle on January 6, 1993 without any period of disability but is affirmed as to the determination that appellant did not sustain any medical condition in 1994 causally related to the 1993 employment injury.

Dated, Washington, D.C.
July 10, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

¹³ See *Margaret A. Donnelley*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).