

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REBECCA BELDEN and U.S. POSTAL SERVICE,
POST OFFICE, Louisville, KY

*Docket No. 99-2103; Submitted on the Record;
Issued October 13, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established that she sustained a foot condition and underwent surgery as a result of factors of her federal employment.

On October 11, 1998 appellant, then a 48-year-old letter carrier, filed a notice of occupational disease and claim for compensation alleging that she developed foot pain as a result of walking on concrete and sometimes up and down stairs with heavy parcels of mail in the performance of duty. She was off work from September 11 through 20, 1999. Appellant has indicated that when she returned to work, she was assigned limited duty.

In a December 23, 1993 report, Dr. H. Fred Preuss, Jr., a Board-certified orthopedic surgeon, noted that appellant was first seen on July 9, 1993 complaining of severe heel pain, which became "worse in the [morning] and after walking in the evening or after sitting." Dr. Preuss noted that appellant's symptoms were related to a condition described as "extremely tight plantar band" or plantar fasciitis. He stated that appellant's foot type, consisting of an extremely high arch, was the main contributing factor to her heel pain. Dr. Preuss noted, however, that appellant's "heel pain is exacerbated by her constant ambulation and lifting of heavy objects at work as a mail carrier." He reported physical findings and described appellant's course of treatment including an endoscopic plantar fascial release. Dr. Preuss opined that if appellant had worked in a sit down job as opposed to a job requiring her to walk, her foot condition would not have increased as rapidly as it did. He concluded his report by stating: "there is no way that anyone can deny that this was not aggravated by her work, however, there is also no way that I can say it was caused by her work in that I see this condition in many people with her foot type."

A magnetic resonance imaging (MRI) report dated September 14, 1997 confirmed that appellant sustained a left heel spur associated with the Achilles tendon.

In a surgical report dated September 11, 1998, Dr. Preuss stated that appellant was a mail carrier with a history of painful heels for a number of years. He indicated that appellant fell on the dorsal flexor foot causing irritation to her Achilles area. The date of the fall was not identified. According to Dr. Pruess, after appellant's foot was in a cast for several months she suffered a rupture of her tendon, which did not resolve with conservative care and required surgical repair.

The record includes a (Form 1769) "Narrative/Complete Description of Accident" that states "On Friday, about 2:00, carrier was stepping from [two] ton truck to deliver mail, carrier assumed she had parked close to curb, carrier had not parked close to curb and as a result stepped onto edge of curb. Carrier twisted ankle but did not think it was hurt until next day when it swelled." There is no date of injury identified and appellant's name is not included on the form.¹

A "Return to Work Report" dated October 2, 1998 stated that appellant underwent a bone spur removal of the left heal on September 11, 1998, and that she was precluded from extended standing or walking. The name of the attending physician is not included on the report and the signature is illegible.

In an October 8, 1998 chart note, Dr. Preuss noted that appellant presented with an inflamed, painful calcaneus left ankle. He reported that appellant had injured her Achilles tendon and prevails suffered from a painful heel spur with nerve entrapment. Dr. Preuss essentially reiterated findings made in his prior reports. He recommended that appellant either be off work or on light duty for four to six weeks.

In an attending physician's report dated October 8, 1998, Dr. Preuss noted that appellant first hurt her foot at work in June 1997 and that she had a preexisting condition of plantar fascitis since 1993. He indicated that appellant was post repair of an Achilles heel tear with nerve entrapment. Dr. Preuss also checkmarked the portion of the form indicating that appellant's diagnosed condition was caused or aggravated by her federal employment.²

By letter dated November 5, 1998, the Office advised appellant of the factual and medical evidence required to establish her claim.

Appellant next submitted treatment notes dating from January 1996 to October 1998, documenting appellant's treatment for foot pain related to plantar fascitis and Achilles tendinitis by Dr. Preuss. He stated in notes dated January 31 and February 2, 1996 dealing with appellant's plantar fascitis that "[patient's condition] continues to be aggravated by her work [as a mail carrier]."

¹ In another (Form 1769) it was noted that appellant alleged she had filed a claim related to her foot condition in 1993, which she attributed to walking up and down stairs in the performance of duty, and that the claim had been approved.

² The employing establishment issued a limited-duty offer to appellant on November 13, 1998 consistent with Dr. Preuss's medical restrictions.

In a decision dated December 7, 1998, the Office denied compensation on the grounds that appellant failed to establish fact of injury.

Appellant requested reconsideration on January 5, 1999 and submitted additional evidence including a December 4, 1998 report by Dr. Preuss. He stated in his December 4, 1990 report: “[appellant] has been under my care for several years. Initially she was treated for heel spurs and plantar fasciitis which was irritated by her occupation (mail carrier). [Appellant] had a partial tear of her Achilles tendon in early 1998. This was treated surgically on Sept[ember] 11, 1998. It should have been corrected earlier [but appellant] did not want to interfere with her work schedule. She is healing uneventfully. All of her foot problems have been aggravated by her postal occupation.”

In a decision dated February 18, 1999, the Office denied modification following a merit review. The Office noted that appellant failed to establish fact of injury, specifically that she sustained an injury at the time, place and in the manner alleged.

The Board finds that the case is not in posture for a decision.

An employee seeking benefits under the Federal Employees’ Compensation Act³ 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.⁴ These are essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease claim.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors.⁶

³ 5 U.S.C. §§ 8101-8193; *see also* 20 C.F.R. §§ 10.115.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *James D. Carter*, 43 ECAB 113 (1991); *George A. Ross*, 43 ECAB 346 (1991).

Initially, the Board notes that since this case involves a claim for occupational disease, the Office erred in considering whether appellant established that she was injured “in the time, place, and manner alleged” as stated in the February 18, 1999 decision. The criteria cited by the Office pertain to fact of injury in a traumatic injury claim.⁷

In this case, appellant has cited specific work factors that she claims has contributed to her foot condition. She submitted numerous medical reports and treatment notes from her treating physician, Dr. Preuss, stating that her diagnosed conditions of plantar fasciitis and Achilles tendinitis were aggravated by factors her employment such as prolonged walking. While Dr. Preuss’ opinion that appellant’s foot condition was aggravated by her employment duties may not be sufficiently reasoned to carry appellant’s burden of proof regarding causal relationship, it raises an uncontroverted inference of causal relationship sufficient to require further development of the evidence. Although the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. When an uncontroverted inference of causal relationship is raised, the Office’s procedures obligate the Office to request further information from an employee’s attending physician where reports from the physician lack necessary details and opinions.⁸ Alternatively, the Office may have appellant examined by a referral physician. The Board, therefore, remands this case for further consideration as to whether appellant established that she sustained a foot condition in the performance of duty.⁹

⁷ Moreover, although appellant’s treatment notes beginning on May 5, 1997 indicate that she fell at home and injured her Achilles heel, that information does not preclude appellant from establishing that her work duties aggravated her foot condition. The mere possibility of another injury does not necessarily establish that appellant’s condition is not related in part to her federal employment. On remand, the Office may chose to inquire from appellant’s treating physician as the nature of the nonwork-related injury and the roles of appellant’s job duties and non-work related foot injuries to her present condition.

⁸ *Rebel L. Cantrell*, 44 ECAB 660 (1993).

⁹ Additionally, the Office should ascertain whether appellant had any prior claims relevant to her foot condition and combine any prior claims with the instant claim for consideration.

The decision of the Office of Workers' Compensation Programs dated February 18, 1999 is hereby vacated, and the case is remanded for consideration consistent with this opinion.

Dated, Washington, DC
October 13, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member