

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KIT W. KWONG and U.S. POSTAL SERVICE,  
SANCHEZ ANNEX, San Jose, CA

*Docket No. 01-921; Submitted on the Record;  
Issued December 11, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a left foot condition causally related to a March 23, 2000 employment incident.

On March 24, 2000 appellant, then a 38-year-old letter carrier, filed a claim for a traumatic injury sustained on March 23, 2000 when she walked on uneven ground and bent her left foot, which began hurting. On April 18, 2000 she underwent surgery on the second toe on her left foot.

By decision dated May 18, 2000, the Office of Workers' Compensation Programs found that the medical evidence was insufficient to establish that appellant's condition was causally related to factors of her employment.

Appellant requested a hearing, which was held on September 20, 2000. By decision dated November 27, 2000, an Office hearing representative found that appellant had not met her burden of proof, because there was no rationalized medical evidence concluding that appellant's disabling condition was causally related to her employment.

The Board finds that appellant sustained a contusion of her left foot on March 23, 2000.

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<sup>2</sup> including the fact that the individual is an "employee of the United States" within the meaning of the Act,<sup>3</sup> that the claim

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Daniel R. Hickman*, 34 ECAB 1220 (1983); 20 C.F.R. § 10.110.

<sup>3</sup> *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

was timely filed within the applicable time limitation period of the Act,<sup>4</sup> 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.<sup>5</sup>

Establishing whether an injury, traumatic or occupational, was sustained in the performance of duty as alleged, *i.e.*, “fact of injury,” and establishing whether there is a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed, *i.e.*, “causal relationship,” are distinct elements of a compensation claim. An employee may establish that an incident occurred in the performance of duty, as alleged, but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to such incident.<sup>6</sup>

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an “injury.” The term “injury” as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.<sup>7</sup> The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.<sup>8</sup>

In a note dated March 23, 2000, Dr. George K. Yeh stated that appellant had experienced severe pain in her left foot since earlier that day; he stated that appellant should not walk for one week. In reports dated March 28 and 29, 2000, Dr. Anthony S. Alvarado noted that appellant had intermittent mild to moderate pain localized at the bony prominence along the second metatarsal head of her left foot and moderate rigidity at the proximal phalanx of the second toe. Dr. Alvarado diagnosed a contused left foot, stated that appellant could return to her regular work on April 3, 2000 and concluded that no treatment was needed.

The Board finds that these reports are sufficient to establish that appellant sustained a contusion of the left foot on March 23, 2000 that did not result in any time lost from work.<sup>9</sup> The Office should therefore pay for treatment by Dr. Yeh on March 23, 2000 and by Dr. Alvarado on March 28, 2000.

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<sup>4</sup> 5 U.S.C. § 8122.

<sup>5</sup> See *Daniel R. Hickman*, *supra* note 2.

<sup>6</sup> As used in the Act, the term “disability” means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; see *Frazier V. Nichol*, 37 ECAB 528 (1986).

<sup>7</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995) states that clear-cut traumatic injury cases with a clearly competent causative factor can be accepted without rationalized medical opinion evidence.

The medical evidence, however, does not establish that appellant's need for surgery on April 18, 2000 was causally related to her March 23, 2000 incident.

Appellant acknowledges that she had a mass on her left second toe for at least 10 years before the March 23, 2000 incident. This is the condition for which surgery was performed on April 18, 2000 and this surgery was recommended by Dr. Joanne Chao in a report prepared on January 19, 2000, more than two months before the March 23, 2000 incident. There is no medical evidence indicating that the March 23, 2000 incident resulted in the need for the surgery, after which appellant first lost time from work.

Dr. William W. Wall, who performed the April 18, 2000 surgery, stated in a September 18, 2000 report that "walking and/or tripping may have acutely exacerbated symptoms," but his report did not indicate that the surgery was required to treat the effects of the March 23, 2000 incident. Appellant has not met her burden of proof to establish that the condition for which surgery was performed and for which she lost time from work was causally related to the March 23, 2000 employment incident.

The decisions of the Office of Workers' Compensation Programs dated November 27 and May 18, 2000 are modified to find that appellant sustained a contusion of the left foot on March 23, 2000 and affirmed as modified.

Dated, Washington, DC  
December 11, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member