

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

N.A., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Fort Lauderdale, FL, Employer)

**Docket No. 08-191
Issued: May 2, 2008**

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 October 25, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' January 12, 2007 merit decision, denying his traumatic injury claim, and a May 14, 2007 nonmerit decision denying reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim.

ISSUES

The issues are: (1) whether appellant established that he sustained a traumatic injury in the performance of duty; and (2) whether the Office properly denied further review of the merits of his claim.

FACTUAL HISTORY

On November 17, 2006 appellant, then a 61-year-old letter carrier, filed a traumatic injury claim alleging injury that day to his low back and left foot. A November 17, 2006 attending physician's report from M. Lewis, M.D., stated that appellant was standing sorting

mail and felt a sudden pain in the left dorsum foot and then the lower back. Dr. Lewis diagnosed lumbosacral strain and left foot strain.

In a November 28, 2008 statement, appellant's supervisor noted that, when asked what happened to cause his foot pain, appellant responded "I don't know" and that he was standing casing mail when it began to hurt.

A November 17, 2006 duty status report diagnosed lumbosacral and left foot strain.

In a November 20, 2006 form, a physician reviewed the history of injury in detail with appellant and opined that his pain in the left foot and back was not work related. It was noted that "patient agrees no injury occurred at work and that he is fully agreeable to follow up with his primary care physician."

In a November 17, 2006 form, Dr. Lewis stated that appellant was standing putting up mail and suddenly his left foot began to hurt with his back becoming more painful as the day continued, noting that no specific action occurred.

In a December 12, 2006 letter, the Office requested that appellant clarify whether his injury was work related with the November 20, 2006 physician's note which stated that the injury was not work related. No response was received.

On January 12, 2007 the Office denied appellant's traumatic injury claim finding that the evidence did not establish that he sustained an injury in the performance of duty.

On April 20, 2007 appellant requested reconsideration. He explained that on November 17, 2006 he had been casing mail and, when he turned to throw some flats, he experienced a sharp pain in his left foot which gradually became more painful. Appellant submitted copies of previously submitted medical reports.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act¹ 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 or her claim including the fact that the individual is an "employee of the

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).

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,” namely, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged, and that such event, incident or exposure caused an injury.⁵

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee’s statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant’s statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁶

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.⁷ An award of compensation may not be based on appellant’s belief of causal relationship. 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 sufficient to establish a causal relationship.⁸

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.⁹ The second component is whether the employment incident caused a personal injury.¹⁰ Causal relationship is

⁴ *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Betty J. Smith*, 54 ECAB 174 (2002); *see also Tracey P. Spillane*, 54 ECAB 608 (2003). 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(ee).

⁶ *See Betty J. Smith*, *supra* note 5.

⁷ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁸ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *John J. Carlone*, 41 ECAB 354 (1989).

a medical question that can generally be resolved only by rationalized medical opinion evidence.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a traumatic injury to his left foot and back on November 17, 2006.

Appellant did not establish that he experienced an employment incident. He noted on his CA-1 form that the nature of his injury was a sudden onset of pain to the top of his left foot. Appellant provided no description of any cause for injury. He presented no evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury. Appellant did not allege that he experienced a specific event, incident or exposure at a definite time, place and manner.¹² There was no explanation as to the time, place or manner in which appellant injured his left foot. Appellant's supervisor noted that he did not know what happened to cause his foot pain. The contemporaneous medical evidence of record reflects that no specific event or incident at work occurred. Dr. Lewis did not obtain a history of appellant doing anything except suddenly experiencing pain in his left foot and back. It is well established that a claimant's belief that a condition was caused or aggravated by work is not sufficient. The mere fact that a condition manifests itself during a period of work does not establish causal relationship.¹³

The Board finds that appellant has failed to establish the fact of injury: he did not submit sufficient evidence to establish that he actually experienced an employment incident at the time, place and in the manner alleged.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act¹⁴ does not entitle a claimant to a review of an Office decision as a matter of right.¹⁵ The Act does not mandate that the Office review a final decision simply upon request by a claimant.¹⁶

¹¹ See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id.*

¹² See 20 C.F.R. § 10.5(ee) which defines traumatic injury. See also *Betty J. Smith*, *supra* note 5; see also *Tracey P. Spillane*, *supra* note 5.

¹³ See *Jamel A. White*, 54 ECAB 224 (2002).

¹⁴ 5 U.S.C. § 8128(a).

¹⁵ *Darletha Coleman*, 55 ECAB 143 (2003).

¹⁶ *Donna M. Campbell*, 55 ECAB 241 (2004).

To require the Office to reopen a case for merit review under section 8128 (a) of the Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹⁷

ANALYSIS -- ISSUE 2

Appellant did not present evidence that the Office erroneously applied or interpreted a point of law nor did he make a legal argument not previously considered by the Office. He submitted copies of medical reports previously of record but they had already been considered by the Office. In his request for reconsideration, appellant stated that he "turned to throw some flats and experienced pain in [his] left foot." However this is not enough to constitute relevant and pertinent new evidence. Appellant previously stated that he was standing casing mail when his foot began to hurt. He still has not described the time, place or manner in which he injured his left foot to constitute an employment incident.

CONCLUSION

The Board finds that appellant has not met his burden to establish that he sustained a traumatic injury. The Office did not abuse its discretion when it denied merit review.

ORDER

IT IS HEREBY ORDERED THAT the May 14 and January 12, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 2, 2008
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

¹⁷ 20 C.F.R. § 10.606(b)(2)(iii) (2004).