U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARRELL E. BATTLES and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, Mo.

Docket No. 97-2323; Submitted on the Record;
Issued April 20, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury on February 22, 1994 in the performance of duty.

On April 6, 1994 appellant filed a claim for a traumatic injury occurring on February 22, 1994 when a coworker "ran over [my] right foot with [a] u-cart causing me to lose my large toenail."

By decision dated October 31, 1994, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence did not establish fact of injury. The Office found that the incident occurred as alleged but that the medical evidence was insufficient to establish that appellant sustained an injury due to the employment incident. In decisions dated February 24, 1995 and July 31, 1996, the Office denied modification of its prior decision.

The Board has duly reviewed the case record and finds that appellant has not established that he sustained an injury in the performance of duty on February 22, 1994.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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[2] and that an injury was

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

sustained in the performance of duty.[3] These are essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

There is no dispute that appellant is a federal employee; that he timely filed his claim for compensation benefits and that the February 22, 1994 incident occurred at the time, place and in the manner alleged. Appellant must, however, establish that this incident caused an injury.

In support of his claim, appellant submitted reports from Dr. Michael Horwitz, a podiatrist. In an Office visit note dated July 6, 1994, Dr. Horwitz stated that appellant complained of pain in his right great toe after it was run over with a u-cart five months earlier. The physician related that x-rays revealed subungual exostosis of the right great toenail and distal phalanx. Dr. Horwitz, however, did not address whether a causal relationship existed between appellant's diagnosed condition and the February 22, 1994 employment incident and thus, his opinion is insufficient to establish the claim.[5]

In a form report dated August 21, 1994, Dr. Horwitz diagnosed a subungual exostosis and avulsion of the right great toenail and checked "yes" that the condition was caused or aggravated by the described employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[6]

In a report dated November 8, 1994, Dr. Horwitz discussed appellant's history of injury when a u-cart ran over the great toe of his right foot and stated that he performed surgery on the foot on July 11 and October 6, 1994. He opined that appellant's condition "could have possibly been caused by the work[-]related injury he described." However, Dr. Horwitz's opinion that the employment incident "could have possibly" caused appellant's diagnosed condition is speculative in nature and thus of diminished probative value. 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 medical certainty, neither can the opinion be speculative or equivocal.[7]

[3] *James E. Chadden Sr.*, 40 ECAB 312 (1988).

[4] *Delores C. Ellyet*, 41 ECAB 992 (1990).

[5] On July 11, 1994 Dr. Horwitz performed a subungual exostectomy of the hallux of appellant's right foot. The record contains office visit notes from July to October 1994 in which the physician discussed appellant's continued problems following the surgery.

[6] *Lucrecia M. Nielson*, 41 ECAB 583 (1991).

[7] *Roger Dingess*, 47 ECAB 123 (1995).

In a report dated January 11, 1995, Dr. Horwitz noted the February 22, 1994 employment incident and described his treatment of appellant since July 1994. He stated:

> "In summary, based upon [appellant's] history and my examination and treatment, it is my opinion, within a reasonable degree of medical and podiatric certainty, that those injuries and their sequelai were a direct result of the U-cart accident mentioned above. A contralateral x-ray view, although it may reveal a congenital predisposition for subungal exostosis formation, does not prove that the symptomatology was not caused by the work[-]related injury."

Dr. Horwitz' opinion, however, is of limited probative value on the relevant issue in the present case as he did not provide adequate medical rationale in support of his conclusion on causal relationship.[8] The physician did not describe the medical process through which the type of accident which occurred on February 22, 1994 could have caused or aggravated the diagnosed condition of subungal exostosis. As Dr. Horwitz' medical report consists solely of a conclusory statement regarding causal relationship unsupported by a medical explanation, it is entitled to little probative value and is insufficient to meet appellant's burden of proof.[9]

The decision of the Office of Workers' Compensation Programs dated July 31, 1996 is hereby affirmed.

Dated, Washington, D.C.
April 20, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[8] *See Leon Harris Ford*, 31 ECAB 514 (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[9] Appellant submitted new evidence to the Board with his appeal; however, as the Office did not consider this evidence in reaching a final decision, the Board may not review it for the first time on appeal *See* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from having such evidence considered by the Office as part of a reconsideration request.