

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD T. COLLIGON and U.S. POSTAL SERVICE,  
POST OFFICE, Camden, NJ

*Docket No. 98-2460; Submitted on the Record;  
Issued April 3, 2000*

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DECISION and ORDER

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

The issue is whether appellant has met his burden of proof to establish that he sustained an injury to his right foot in the performance of duty.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not sustained his burden of proof to establish that he was injured in the performance of duty.

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, 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.<sup>2</sup> These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Daniel R. Hickman*, 34 ECAB 1220 (1983).

<sup>3</sup> The Office of Workers' Compensation Programs' regulations clarify that a traumatic injury refers to injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift, whereas occupational disease refers to injury produced by employment factors which occur or are present over a period longer than a single workday or shift; *see* 20 C.F.R. §§ 10.5(a)(15), (16).

or condition for which compensation is claimed; 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.<sup>4</sup>

In this case, on January 28, 1997 appellant, then a 38-year-old postal clerk, filed a claim for occupational disease alleging that, on or around December 24, 1996, the duties of his limited duty position, specifically pushing heavy mail carts, lifting mail and parcels and long periods of standing, exacerbated his preexisting foot condition, causing him extreme pain. He stopped work on the day of the incident, returned to work on January 6, 1997, and then stopped work completely two days later.

In support of his claim, appellant submitted progress notes dating from April 18, 1994 to January 22, 1997 from his treating physician, Dr. Jeffrey S. Katz, a treating podiatrist, and medical reports dating from November 9, 1995 to February 23, 1996 from Dr. Michael S. Downey, a treating podiatrist and Dr. Daniel J. Ragone, Jr., a treating Board-certified physiatrist. The reports document the treatment of appellant's long-standing foot conditions, including heel spur syndrome, chronic plantar fasciitis, pes planus deformities and myofascial pain syndrome. As a result of his condition, appellant underwent plantar fascial release surgery on both feet. In a treatment note dated December 26, 1996, Dr. Katz noted that appellant presented complaining of pain in his right foot, stating that he was pushing a cage of mail when he felt a stretching and pulling in his foot, followed by pain. On December 30, 1996 Dr. Katz restricted appellant to light duty for one month. In a Form CA-20 report dated February 24, 1997, Dr. Katz listed a diagnosis of neuritis and tendinitis, which he indicated by check mark were caused or aggravated by an employment activity. Dr. Katz again restricted appellant to limited duty.

At the request of the Office, on July 28, 1997, appellant was examined by Dr. Marc L. Kahn, a Board-certified orthopedic surgeon, for a second opinion evaluation. In his report, Dr. Kahn listed his impressions as right foot pain, etiology unknown and preexisting osteoarthritis, tibiotalar joint. He stated that there was really no diagnosis in the patient, because there was no objective evidence of an injury or disability, only subjective complaints. Dr. Kahn further stated that he felt appellant could have returned to his regular light duty in January 1997. He concluded that appellant required no continuing musculoskeletal care, but should receive a psychological evaluation.

In a decision dated August 19, 1997, the Office denied appellant's claim, finding that the weight of the medical opinion evidence rested with the second opinion physician, Dr. Kahn.

Appellant, through counsel, requested an oral hearing, and submitted additional medical evidence in support of his claim. Included in the evidence submitted were the results of magnetic resonance imaging (MRI), a bone scan and nerve conduction studies which revealed osteoarthritis and tarsal tunnel syndrome, but which did not discuss the relationship, if any to appellant's employment duties. Also included were duplicate copies of evidence already contained in the record. Finally, appellant submitted a narrative report dated March 2, 1998,

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<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52

from Dr. Jeffrey Katz, in which the physician stated that appellant had undergone treatment and surgery for chronic plantar fasciitis and heel spur syndrome, and that appellant was improving until December 1996, when appellant reported that he was pushing a mail cage and felt a severe pain and pulling sensation in the plantar aspect of his right foot. Later the same day he was unloading a mail truck and also felt significant pain and discomfort in his right foot. The physician further stated that, since that time, appellant's condition had worsened, and that MRI and electromyography studies revealed posterior tibial neuritis of the right foot and ankle. Dr. Katz further stated:

"In my opinion the incident which occurred while at work in December of 1996 could have significantly impacted on the condition of [appellant's] foot. The act of pushing a heavy mail cage or lifting or carrying mail from a truck could have put excessive pressure onto the right extremity causing an irritation of the soft tissues and nerve structures. Since that time, [appellant's] condition has seemed to deteriorate. His condition seems to be chronic in nature and his progress at this time does not appear to be good. I recommend that he be placed on permanent disability."

In a decision dated May 11, 1998, an Office hearing representative affirmed the Office's August 18, 1997 decision, finding that, although the factual evidence supports a finding that the incident occurred as alleged, the medical evidence that appellant submitted was insufficient to establish appellant's claim because it provided no rationalized medical opinion on causation.

The only evidence of record which contains an opinion as to the causal relationship, if any, between appellant's diagnosed conditions and his employment activities, consists of the February 24, 1997, Form CA-20 report from Dr. Katz and his March 2, 1998 narrative report. On the Form CA-20, Dr. Katz indicated by check mark that appellant's diagnosed foot conditions were caused or aggravated by an employment activity. However, a medical report which checks a box on a form report "yes," with regard to whether a condition is employment related, is of diminished probative value without further detail and explanation.<sup>5</sup> While Dr. Katz attempted to provide the necessary additional explanation in his narrative report dated March 2, 1998, the physician's opinion, that appellant's employment duties "could have" impacted on the condition of appellant's foot, is also of diminished probative value. Although a 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, it also cannot be speculative or equivocal.<sup>6</sup> Furthermore, while Dr. Katz noted that appellant's condition "seemed to deteriorate" after the December 1996 incident, the mere manifestation of a condition during a period of employment does not raise an inference of causal relationship.<sup>7</sup> The question of whether a causal relationship exists between the condition and the employment is medical in nature and can be established generally only by rationalized medical opinion. As none of appellant's medical reports are sufficiently rationalized to support a causal relationship between the work factors identified by

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<sup>5</sup> *Alberta S. Williamson*, 47 ECAB 569 (1996); *Lester Covington*, 47 ECAB 539 (1996).

<sup>6</sup> *Roger Dingess*, 47 ECAB 123 (1995).

<sup>7</sup> *Ruby I. Fish*, 46 ECAB 276 (1994).

appellant and his diagnosed foot and ankle symptoms, the Board finds appellant has not met his burden of proof to establish an injury in the performance of duty as alleged.

The decisions of the Office of Workers' Compensation Programs dated May 11, 1998 and August 19, 1997 are hereby affirmed.

Dated, Washington, D.C.  
April 3, 2000

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member