U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EARLY D. HILL and U.S. POSTAL SERVICE,
MANITO STATION, Spokane, WA

Docket No. 00-652; Submitted on the Record;
Issued May 8, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty.

On May 11, 1999 appellant, then a 40-year-old letter carrier, filed a notice of occupational disease claiming that, on January 7, 1999, he jammed his small toe while going up cement steps. He submitted several duty status reports dated January 12 to May 10, 1999, diagnosing him with "sprain four and five digits R[ight] foot" and "bone spur right small toe." Appellant worked a limited-duty assignment from January 13 until April 27, 1999, when he returned to his regular duties.

Appellant submitted a June 6, 1999 medical report from Jeffrey D. Ager, a Board-certified radiologist, and Dr. R. Frost.[1] Dr. Ager stated that appellant suffers from "interval reduction of subluxation" and "bony resorption at the base of the fifth middle phalanx." Dr. Frost stated:

> "[Appellant] called earlier this afternoon noting [an] injury [he] sustained at work, at 1 o'clock this afternoon, where he was going up some steps and did not have his foot fully on the step and noted a dorsiflexion force to the right foot."

By letter dated August 5, 1999, the Office requested that appellant submit additional factual and medical information. The Office also advised appellant to resubmit his claim as a traumatic injury (Form CA-1).

By decision dated September 15, 1999, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that the injury occurred at the time, place and in the manner alleged.

By letter dated October 20, 1999, appellant requested a review of the written record.

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[1] The Board was unable to determine Dr. Frost's full name and whether he is Board certified.

By decision dated December 13, 1999, the Office found that appellant was not entitled to a hearing because he did not submit his request within 30 days.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty as alleged.

The only decision before the Board is the Office's September 15, 1999 decision. The Board and the Office may not simultaneously have jurisdiction over the same case. Because the Office must exercise its discretion on whether to grant an untimely request for a hearing, the Office may not issue a decision granting or denying a request for a hearing on the same issue on appeal before the Board.[2] The Office, therefore, did not have the authority to issue its December 13, 1999 decision, as the case was at that time before the Board on an appeal of the same decision on which the hearing was requested.

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[3] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[4]

The Board finds that appellant did establish that an incident occurred at the time, place and in the manner alleged, but that the medical evidence does not establish a causal connection between the incident and his employment.

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5]

No medical reports of record address the issue of causal relationship. The only report that even mentions appellant's employment is the June 6, 1999 report from Dr. Frost, whose form reports indicate no history of injury; he states only that appellant called him and notified him that he hurt his right foot at work. Dr. Frost does not provide a rationalized medical opinion on the cause of appellant's condition. Nor does he mention any factors of appellant's employment.

[2] *Rafael Gonzalez*, Docket No. 90-1654 (issued May 16, 1991).

[3] *John J. Carlone*, 41 ECAB 354 (1989).

[4] *Id*. For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

[5] *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

Because the medical evidence of record diagnosed sprained toes on appellant's right foot but offered no medical rationale explaining the relationship between the diagnosed condition and appellant's employment, the Board finds that the Office properly denied appellant's claim.

The September 15, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 8, 2001

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member