U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYFORD HARDEN and U.S. POSTAL SERVICE,
POST OFFICE, Doraville, GA

Docket No. 03-1938; Submitted on the Record;
Issued November 10, 2003

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a right foot injury in the performance of duty causally related to factors of his federal employment.

On February 14, 2000 appellant, then a 44-year-old letter carrier, filed a claim alleging that on February 7, 2000 he sustained a right foot injury when a coworker ran over his foot with a mail hamper.[1] He stopped work on February 9, 2000 and returned to light duty on February 12, 2000.

In support of his claim, appellant submitted medical evidence including nursing notes dated January 5 to February 2, 2000, which noted that he had been under treatment for a medical condition and could return to light duty on January 10, 2000. Also submitted were clinic notes dated January 19 to February 4, 2000 advising that appellant could not stand or use an accelerator pedal due to foot pain. In Veterans Administration Medical Center (VAMC) records, dated February 7, 2000, appellant was diagnosed with a right foot and ankle strain and was advised to return to light-duty work in two days.

In a letter dated March 9, 2000, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office particularly requested that he submit a physician's reasoned opinion addressing the relationship between his claimed condition and specific employment factors.

In response to the Office's request, appellant submitted additional medical evidence, including VAMC records dating from April 6, 1999 to March 1, 2000, which noted that he had a history of a right navicular bone fracture which he sustained while running in 1984 and for which

[1] By letter dated October 23, 2000, appellant advised that the correct date of his injury was February 7, 2000 not February 8, 2000 as noted on the CA-1 form.

he underwent an exostectomy on October 6, 1999. In a VAMC report dated February 2, 2000, appellant reported residual foot pain and requested to be relieved from truck duty until his right foot pain subsided. A February 7, 2000 report provided a history that appellant sustained a right foot injury, when a mail hamper rolled over his foot. He was diagnosed with a right foot/ankle strain without fracture or dislocation. A March 1, 2001 note advised that appellant's right foot pain had decreased since the October 1999 surgery; however, since the February 7, 2000 work injury he experienced pain and swelling of the right foot.

In a report dated March 22, 2000, Dr. David A. Schiff, Board-certified in physical medicine and rehabilitation, noted appellant's history of navicular fracture and two subsequent surgeries and that he had a superimposed work injury which aggravated his previous condition. He noted findings of tenderness and pain on examination of the foot, advised that the condition was work related and referred appellant to Dr. James L. Beskin, a Board-certified orthopedic surgeon. Dr. Schiff noted that appellant could return to modified duty with restrictions on driving and climbing.

By report dated March 30, 2000, Dr. Beskin noted that appellant had injured his right foot in 1982 while running in the Army, and underwent corrective surgery in 1991 and 1999. He indicated that appellant continued to experience problems with his right foot and on February 7, 2000 a mail hamper rolled over his right foot, aggravating his preexisting condition. Dr. Beskin noted findings of tenderness on examination and diagnosed chronic right foot pain, status post two surgeries at the navicular site and exacerbation of his symptoms by a traumatic sprain of the right foot from a mail hamper on February 7, 1999. He further noted that appellant's primary problems were due to his service-connected injury and surgeries. Dr. Beskin advised that it was conceivable that the incident of February 7, 2000 exacerbated appellant's symptoms, but as best as he could tell it did not create any new injury to his foot.

In a duty status report dated April 4, 2000, Dr. Julia Campbell, an internist, diagnosed right foot pain and noted a prior foot fracture. She advised that appellant could return to full-time work on March 30, 2000, subject to various restrictions. In a May 10, 2000 note, Dr. Paul Reynolds, a podiatrist, advised that appellant could return to work for six hours a day in one week.

In a June 14, 2000 decision, the Office denied appellant's claim for compensation. The Office found that the medical evidence was insufficient to establish that his medical condition was caused or aggravated by employment factors.

By letter dated June 16, 2000, appellant requested an oral hearing before an Office hearing representative. The hearing was held on October 24, 2000. Appellant submitted a report from Dr. Reynolds dated June 14, 2000, which noted that he could work eight hours a day and drive a mail truck for one and a half hours a day.[2] Also submitted was a report dated October 11,

[2] Appellant submitted physician's assistant notes from October 24 and 26, 2000, which indicated that he experienced chronic intermittent swelling and tenderness over the right foot which was exacerbated by the injury of February 7, 2000, however, there was no evidence of injury. Reports from a physician's assistant are not considered medical evidence as a physician's assistant is not a physician as defined under the Act. *See Ricky S. Storms*, 52 ECAB 349 (2001).

2000, from Dr. Jeffrey A. Frenchman, a podiatrist, who noted that appellant had previously undergone surgical intervention on the right foot with moderate relief, but that subsequently a mail hamper ran over his foot.

By decision dated January 12, 2001, the Office hearing representative affirmed the June 14, 2000 decision.

In a letter dated August 10, 2001, appellant requested reconsideration and submitted additional medical evidence. In a report dated January 25, 2001, Dr. Gordon E. Duggar, a podiatrist, noted appellant's history of right foot surgeries in 1991 and 1999 and diagnosed exostosis of the right navicular. He noted that on February 7, 2000 a mail hamper ran over appellant's right foot which exacerbated his distress. Dr. Duggar indicated that there was no significant evidence on physical examination or x-ray regarding the trauma, but noted that there was a preexisting condition and opined that, at worst, this injury would only be temporarily disabling. He further noted that the second surgery may have helped, but not entirely relieved appellant's right foot problem.

Also submitted was a report from Dr. Albert Johary, an internist, dated July 11, 2001, who diagnosed status post navicular fracture of the right foot, status post two surgeries and trauma to the right foot on February 2, 2000. He noted that an x-ray on November 29, 2000 revealed no acute abnormality and opined that the problem was a ligamental/tendon problem. In a report dated July 18, 2001, Dr. Reynolds noted that appellant had been treated at the VAMC for a painful right foot and indicated that this incident was a separate entity from any previous surgical intervention performed on the right foot. He indicated that a March 1, 2000 x-ray revealed no evidence of an acute fracture of the right foot and advised that appellant was able to work an eight-hour day and drive a truck two and one half hours a day.

In a decision dated April 24, 2002, the Office denied modification of the prior decisions on the grounds that the evidence submitted was insufficient to warrant modification.

In a letter dated March 13, 2003, appellant again requested reconsideration and submitted additional medical evidence. In a report dated June 7, 2002, Dr. Johary noted that appellant sustained an injury to his right foot on February 7, 2000 when his foot was run over by a mail hamper and indicated that this new injury caused severe pain and disability. A work status report dated October 16, 2002 and an admission report from Dr. Erroll J. Bailey, an orthopedist, who diagnosed a posterior tibial tendon tear and accessory navicular with degenerative arthritis of the right foot with a recommendation for surgery. In a report dated February 10, 2003, Dr. Frenchman indicated that appellant suffered a trauma to his right foot when it was run over by a mail hamper and opined that this was a separate and distinct injury from any previous surgical intervention. He noted that there was no new or distinctive objective, radiographic or clinical findings to substantiate appellant's complaints. Dr. Frenchman advised that, at worst, the mail hamper injury would be temporary in nature. He opined that another plausible cause for

appellant's condition was that the second surgery helped, but did not entirely relieve the right foot problem and the February 7, 2000 trauma further aggravated his preexisting condition.[3]

In a decision dated May 21, 2003, the Office again denied modification of the prior decisions.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty, causally related to factors of his federal employment.

An employee seeking benefits under the Act 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 the 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another.[5] The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.[6] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[7] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[8] A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.[9]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or

[3] On August 31, 2002 appellant filed a recurrence of disability claim. In a letter dated October 4, 2002, the Office informed appellant that his original claim for injury sustained on February 8, 2002 was denied and, therefore, he could not file a claim for recurrence on a claim which was never accepted by the Office.

[4] *Gabe Brooks*, 51 ECAB 184 (1999); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] *Caroline Thomas*, 51 ECAB 451 (2000).

[6] *Id*.

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

[8] *See Delphyne L. Glover*, 51 ECAB 146 (1999).

[9] *Caroline Thomas*, *supra* note 5.

incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[10]

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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[11]

It is not disputed that appellant's right foot was run over by a mail hamper on February 7, 2000. However, he has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment incident and that any alleged right foot condition is causally related to the employment incident. On March 9, 2000 the Office advised appellant of the type of medical evidence needed to establish his claim.

Appellant submitted various medical records from the VAMC dated April 6, 1999 to February 2, 2000, which predated the February 7, 2000 incident. These records noted a history of a right navicular bone fracture occurring in 1984, for which he underwent surgical correction in 1991 and October 1999. These medical records, however, do not establish that appellant sustained a right foot injury on February 7, 2000 since they predate the time of the claimed foot condition. The first mention of a work-related injury is a VAMC note dated February 7, 2000, which reported a history that a mail hamper rolled over appellant's right foot and foot and ankle strains were diagnosed. However, this report did not provide any opinion regarding the causal relationship between appellant's right foot condition and the employment incident believed to have caused or contributed to such condition. Additionally, there was no explanation of how appellant's preexisting right foot condition may have affected his condition.[12]

Dr. Schiff's report dated March 22, 2000, noted appellant's history of navicular fracture and two subsequent surgeries and advised that his injury was work related, specifically stating that this was not a new injury, rather an aggravation of appellant's previous preexisting injury.

Under the Act, when employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation. When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased, even if the employee is medically disqualified to continue employment because of the effect work factors may have on

[10] *Calvin E. King*, 51 ECAB 394 (2000).

[11] *Leslie C. Moore*, 52 ECAB 132 (2000).

[12] *Id.*; *see also Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

the underlying condition.[13] Although Dr. Schiff's opinion somewhat supports that the February 7, 2000 incident aggravated appellant's preexisting condition, in this conclusory statement, he provided no medical reasoning or rationale to support such statement. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[14] Dr. Schiff's opinion is, therefore, insufficient to meet appellant's burden.

In his report of March 30, 2000, Dr. Beskin attributed appellant's condition to a previous nonwork-related injury noting that his primary problems were from his service-connected injury and subsequent surgeries. Furthermore, he offered only speculative support for causal relationship by opining that it was conceivable that the incident of February 7, 2000 exacerbated his symptoms, "but as best as I could tell did not create any new injury to his foot…." The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.[15] Therefore, Dr. Beskin's report too, is insufficient to meet appellant's burden.

The report from Dr. Frenchman dated February 10, 2003 advised that the injury of February 7, 2000 was a separate and distinct injury from any previous surgical intervention. However, he indicated that there was no new or distinctive objective, radiographic or clinical findings to substantiate appellant's complaints and advised that, at worst, the mail hamper injury would only be temporary in nature. Moreover, the physicians' opinion was speculative, as he noted that another plausible cause for appellant's condition was a second surgery, which did not entirely relieve his foot problem.[16] Dr. Duggar also indicated in his report of January 12, 2001 that there was no significant evidence on physical examination or x-ray regarding trauma from the February 7, 2000 incident. He further noted that there was a preexisting condition and that, at worst, the February 2000 injury would only be temporarily disabling. His opinion, therefore, is also deficient as it is speculative with regard to relating the cause of appellant's injury to his employment as he concluded that appellant's "second surgery helped, but did not entirely relieve the problem …" which may account for his current complaints.[17]

Other reports from Dr. Johary dated July 11, 2001 and June 7, 2002 did not provide a complete and accurate history of appellant's injury, noting a date of injury of February 2, 2000, contrary to the date provided by appellant of February 7, 2000.[18] Although, he noted that appellant was experiencing symptoms of his right foot condition, which was exacerbated by this incident, without any further explanation or rationale, such a report is insufficient to establish a

[13] *Raymond W. Behrens*, 50 ECAB 221 (1999).

[14] *Theron J. Barham, supra* note 12.

[15] Speculative and equivocal medical opinions regarding causal relationship have no probative value; *see Alberta S. Williamson,* 47 ECAB 569 (1996); *Frederick H. Coward, Jr.,* 41 ECAB 843 (1990); *Paul E. Davis,* 30 ECAB 461 (1979).

[16] *Id*.

[17] *Id*.

[18] *Leslie C. Moore, supra* note 11.

causal relationship.[19] Therefore, Dr. Johary's reports are insufficient to meet appellant's burden of proof.

The remainder of the medical evidence fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment, nor is the belief that his condition was caused, precipitated or aggravated by his employment sufficient to establish causal relationship.[20] Causal relationships must be established by rationalized medical opinion evidence.[21] Appellant failed to submit such evidence and the Office, therefore, properly denied appellant's claim for compensation.

The decision of the Office of Workers' Compensation Programs dated May 21, 2003 is affirmed.

Dated, Washington, DC
November 10, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[19] *Id.*

[20] *See Michael E. Smith* 50 ECAB 313 (1999).

[21] *John H. Botts*, 50 ECAB 265 (1999).