

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

ERNEST B. SCHRUM, Appellant

and

**DEPARTMENT OF ENERGY, OFFICE OF
THE INSPECTOR GENERAL,
Washington, DC, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 03-2169
Issued: March 2, 2004**

Appearances:
Ernest B. Schrum, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 5, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated August 6, 2003, which denied modification of an April 15, 2003 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on September 27, 2001.

FACTUAL HISTORY

On February 5, 2003 appellant, then a 57-year-old program analyst, filed a traumatic injury claim, Form CA-1, alleging that on September 27, 2001 he "snagged [his] left shoe sole on [the] corner of [a] protruding metal plate in floor," which caused him to "twist [his] left foot, fall to [the] floor and [hit his] wrist." Appellant claimed that he sustained injuries to his left

ankle and left wrist.¹ Ray Madden reportedly witnessed the September 27, 2001 incident and he corroborated appellant's statement. He further added that "the blow of the foot hitting this metal plate caused the plate to slash through the left shoe leaving a good size hole [in the] shoe." Appellant continued to work following his alleged injury.

By letter dated March 12, 2003, the Office advised appellant that the information submitted with his claim was insufficient to determine whether he was eligible for compensation. The Office advised appellant of the additional medical and factual evidence needed to support his claim. In particular, appellant was directed to provide a reasoned medical opinion, including an explanation by appellant's physician, as to how the reported work incident caused or aggravated the claimed injury.

On April 7, 2003 the Office received appellant's response along with medical reports from Dr. Charles Mess, Jr., a Board-certified orthopedic surgeon, dated February 12, February 26 and March 21, 2003. In his February 12, 2003 report, Dr. Mess noted the history of injury and that appellant had been experiencing left lateral ankle pain for a little over a year, which he attributed to the injury. He further noted that appellant had a long history of bilateral pes planovalgus. Dr. Mess referred appellant for a magnetic resonance imaging (MRI) scan to determine whether appellant had a peroneal tendinitis caused by the alleged work incident or whether he developed an impingement due to his flat feet.

A February 21, 2003 MRI scan of appellant's left ankle was interpreted by Dr. Daniel M. Marder, a Board-certified diagnostic radiologist, and revealed moderate edema in the lateral aspect of the calcaneus consistent with a bone contusion or stress reaction, a partial tear of the anterior talofibular ligament and a mild partial tear or tendinitis of the peroneus brevis, and mild peroneal tenosynovitis.

In his February 26, 2003 report, Dr. Mess reviewed the MRI scan and diagnosed appellant's condition as subfibular impingement secondary to his extreme pes planovalgus feet. In his March 21, 2003 report, Dr. Mess opined that the alleged work incident may have aggravated appellant's symptoms, but he could not say that the incident was the sole cause of his symptoms.

By decision dated April 15, 2003, the Office denied appellant's claim, finding that appellant had not met the requirements for establishing that he sustained an injury as alleged.

In a letter dated July 8, 2003, appellant requested reconsideration of the April 15, 2003 denial of his claim. Appellant enclosed copies of previously filed medical reports along with an April 25, 2003 report from Dr. Sheldon Mandel, a Board-certified orthopedic surgeon. Dr. Mandel noted that appellant had injured his left ankle and heel on September 27, 2001, had experienced severe pain and swelling, and that the MRI scan showed "significant damage to the bone consistent with a traumatic injury." Dr. Mandel opined that "the history given by appellant, the physical examination and the findings of the MRI scan [were] consistent with a traumatic

¹ While the CA-1 is dated February 5, 2003, appellant stated that the original Form CA-1 was signed September 27, 2001.

injury sustained as [appellant] described.” He stated that appellant continues to have problems with his foot and ankle and will require further treatment.

By decision dated August 6, 2003, the Office found the evidence submitted with the request for reconsideration was not sufficient to warrant modification of the April 15, 2003 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² 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 filed within the applicable time limitation 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.”³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or 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. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.⁵ 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 employment, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁶

ANALYSIS

In the instant case, the Office concluded that the evidence was insufficient to establish that appellant sustained an injury on September 27, 2001. The Board notes that appellant has been consistent in maintaining the manner in which his September 27, 2001 alleged work incident occurred. The Board has held that an employee’s statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless

² 5 U.S.C. §§ 8101-8193.

³ Gary J. Watling, 52 ECAB 278 (2001); Leslie C. Moore, 52 ECAB 132 (2000); Elaine Pendleton, 40 ECAB 1143, 1145 (1989).

⁴ Michael E. Smith, 50 ECAB 313 (1999); Victor J. Woodhams, 41 ECAB 345 (1989).

⁵ Gloria J. McPherson, 51 ECAB 441 (2000); Elaine Pendleton, *supra* note 3.

⁶ See 20 C.F.R. § 10.115(e); Jacqueline M. Nixon-Steward, 52 ECAB 140 (2000); Gary Fowler, 45 ECAB 365 (1994).

refuted by strong or persuasive evidence.⁷ The circumstances of this case, as supported by Mr. Madden's witness statement, lend support to appellant's allegation that he experienced the claimed incident while in the performance of his duties on September 27, 2001. Furthermore, the employing establishment has not contested that the incident occurred on September 27, 2001. Accordingly, the Board finds that the incident of September 27, 2001 occurred as alleged.

However, the Board finds that the medical evidence is insufficient to establish a causal relationship between appellant's claimed condition and his accepted employment incident.⁸ Causal relationship is a medical issue,⁹ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.¹⁰ 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 causal relationship.¹¹

The medical evidence in the instant case consists of reports from Drs. Mess and Mandel and an MRI scan report. None of these reports, however, contain a well-rationalized opinion regarding the cause of appellant's condition. Dr. Mess' opinion that the September 27, 2001 injury "may have aggravated appellant's symptoms" of subfibular impingement secondary to his extreme pes planovalgus is a speculative statement, lacks adequate rationale and, therefore, is of diminished probative value.¹² Although Dr. Mandel opined that the history of the injury, appellant's physical examination and the MRI scan were consistent with a traumatic injury, he failed to provide a diagnosis or an explanation as to how the injury of September 27, 2001 could have resulted in or aggravated appellant's condition. Moreover, as the injury occurred on September 27, 2001 and appellant's initial medical examination appears to have been on February 12, 2003, the medical reports do not provide reasons for lack of treatment to support the delay in appellant seeking medical treatment.

As appellant has submitted no reasoned medical opinion supporting a causal relationship between the September 27, 2001 incident and his foot and ankle condition, he has not met his burden of proof.

⁷ *Linda S. Christian*, 46 ECAB 598 (1995).

⁸ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

⁹ *Mary J. Briggs*, 37 ECAB 578 (1986).

¹⁰ *Gary L. Fowler*, *supra* note 6; *Victor J. Woodhams*, *supra* note 4.

¹¹ *Minnie L. Bryson*, 44 ECAB 713 (1993).

¹² See *Betty M. Regan*, 49 ECAB 496 (1998); *Philip J. Deroo*, 39 ECAB 1294 (1988).

CONCLUSION

The Board finds that appellant has not established that his foot condition is causally related to his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 6 and April 15, 2003 decisions of the Office of Workers' Compensation Programs are affirmed as modified to reflect that the incident occurred as alleged but that appellant had not submitted sufficient medical evidence to establish that he sustained an injury in the performance of duty.

Issued: March 2, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member