United States Department of Labor
Employees' Compensation Appeals Board

LADONNA D. JOHNSON, Appellant	)	
and	)	**Docket No. 05-1222**
	)	**Issued: August 19, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Fort Worth, TX, Employer	)	

Appearances:
LaDonna D. Johnson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 11, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' hearing representative's decision dated June 29, 2004 which affirmed a January 5, 2004 Office decision, which found that appellant did not sustain an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on September 17, 2003.

FACTUAL HISTORY

On October 8, 2003 appellant, then a 39-year-old transportation security screener, filed a traumatic injury claim (Form CA-1) alleging that her right foot was run over by an all-purpose container (APC) on September 17, 2003 in the performance of duty. Appellant stopped work on October 9, 2003 and returned that same day.

An October 8, 2003 x-ray of the right foot, read by Dr. Shakila Ahmed, a Board-certified radiologist, revealed a very faint radiolucent transverse line over the head of the fourth metatarsal. Dr. Ahmed advised that most likely this represented the "artifact; however, the possibility of a questionable fracture cannot be entirely excluded." A follow-up examination was recommended.

In reports dated October 9, 2003, Dr. Larry Davis, Board-certified in internal medicine, determined that on September 17, 2003 appellant was pulling a cart, and the cart ran over her foot. He noted that appellant had tenderness and pain in the right foot and diagnosed a right foot sprain. Dr. Davis indicated that appellant was able to return to restricted duty and provided restrictions which included standing and walking for no more than 2 to 3 hours per day, no climbing or kneeling of no more than 30 minutes to 1 hour per day, no more than 2 to 4 hours of bending or stooping and twisting for no more than 3 to 5 hours per day.

In an October 20, 2003 duty status report, Dr. Linden Dillin, a Board-certified orthopedic surgeon, determined that appellant was pulling some equipment which ran over her right foot. He indicated that appellant could return to restricted duty, diagnosed right foot pain and advised restrictions, which included one to two hours of intermittent walking. In a separate report of the same date, Dr. Dillin noted appellant's history of injury and treatment and also indicated that appellant's position required her to stand for 8 to 12 hours at a time and as often as 6 days a week. He indicated that this caused appellant to work in excess of 60 hours per week. He diagnosed "right foot arthropathy secondary to trauma and to a lesser degree secondary to the chronic demands of her job as an occupational disease."

On October 28, 2003 the Office received several forms from a physical therapy provider, which indicated that appellant was a "no show" for appointments on October 10, 13 and 16, 2003.

The record reflects that appellant accepted the modified-duty position of a mail processing clerk on October 29, 2003.

A November 11, 2003 bone scan, performed by Dr. Holt Daniel, a radiologist, revealed intense activity around the navicular bone which was "suspicious for a fracture and possibly severe arthritis." A magnetic resonance imaging scan of the same date, read by Dr. Daniel, revealed osteoarthritis in the first metatarsal and first cuneiform as well as arthritic changes.

In a November 13, 2003 duty status report, Dr. Dillin took appellant off work for six weeks and indicated that appellant had right foot pain. In a separate note, of the same date, he advised that appellant should remain off work because any increase in weight bearing stress on her foot could lead to deterioration of her "presumed navicular and/or cuneiform fractures."

By letter dated November 18, 2003, the employing establishment provided Dr. Dillin with a copy of a limited-duty position for the appellant and requested an opinion as to whether she could perform those duties. Dr. Dillin advised that she could not perform her limited duties. In a separate letter to Dr. Dillin also dated November 18, 2003, the employing establishment requested clarification from Dr. Dillin with regard to his recommendations that appellant remain

off work because an increase in weight bearing stress on her foot could lead to a deterioration in her "presumed navicular and/or cuneiform fractures." The employing establishment noted that appellant was provided with a walking boot and was not using crutches. Additionally, Dr. Dillin was advised regarding the number of hours appellant actually worked, which the employing establishment indicated were usually intermittent and that she had never worked 60 or more hours per week.

By letter dated December 3, 2003, the Office advised appellant that additional factual and medical evidence was needed. Appellant was requested to provide a physician's opinion supported by a medical explanation as to how the reported work incident caused the claimed injury. The Office explained that the physician's opinion was crucial to her claim and allotted appellant 30 days within which to submit the requested information.

On December 16, 2003 appellant filed a CA-7 claim for leave without pay from November 13, 2003 to January 2, 2004.

In correspondence dated December 17, 2003, the employing establishment controverted the claim. The employing establishment noted that appellant's physician was keeping her off work due to degenerative conditions, unrelated to her employment. In a separate letter also dated December 17, 2003, the employing establishment indicated that it appeared that appellant "misrepresented her pre-injury duties" to her physician as he erroneously believed that she worked in excess of 60 hours a week.

On December 22, 2003 the Office received an undated duty status report, in which Dr. Dillin diagnosed midfoot arthropathy and determined that appellant had narrowing and irregularity of her "naviculcuneiform joints."

By decision dated January 5, 2004, the Office denied appellant's claim on the grounds that she did not establish an injury as alleged. The Office found that the medical evidence did not establish that the claimed medical condition was related to the established work-related events.

The Office subsequently received additional evidence which included copies of previous reports as well as a report dated December 1, 2003 in which Dr. Dillin opined that appellant could not "return to a sedentary job at this point because she does not drive and a friend of hers drove her in and she does not feel safe driving even an automatic at this point."

In reports dated December 29, 2003, Dr. Dillin[1] advised that appellant could return to work on December 30, 2003 in a strictly sedentary position for no more than 40 hours a week.[2] Dr. Dillin continued to treat appellant and submit reports.

[1] The report is unsigned; however, it appears to be from Dr. Dillin.

[2] The record reflects that appellant accepted a modified position on January 5, 2004.

In a January 19, 2004 report, Dr. Dillin repeated his previous history of injury and noted that there was a direct causation from the September 17, 2003 employment injury with regard to having the cart's wheels roll over the top of appellant's foot and which was the direct cause of appellant's pain. He explained that the trauma from the sudden weight placed on top of the arch disrupted the arch. Dr. Dillin also noted that some preexisting degenerative changes which were likely caused by the amount of standing and walking appellant had to do as part of her duties as a clerk. He opined that the injury of September 17, 2003, was the direct cause of the pain that appellant experienced in her foot. He further opined that regarding the long hours of standing and walking "this activity by itself results in chronic stress that substantially increases the risk for arthritis in the foot." Dr. Dillin explained that there were two mechanisms related to appellant's right midfoot arthropathy and they included the direct trauma of September 17, 2003 and the chronic repetitive stress as an occupational condition. He continued to treat appellant.

On January 20, 2004 appellant requested a review of the written record.

By letter dated May 25, 2004, the employing establishment controverted appellant's claim. It noted that, although appellant alleged that her injury occurred on September 17, 2003, she continued to work 49 to 50 hours a week, until October 10, 2003 when she was presented with work restrictions.

By decision dated June 29, 2004, the Office hearing representative affirmed the Office's January 5, 2004 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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[4] and that an injury was sustained in the performance of duty.[5] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine whether a federal 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.[7] Second, the

[3] 5 U.S.C. §§ 8101-8193.

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

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

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

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

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

ANALYSIS

Appellant alleged that she sustained an injury to her right foot when an APC cart ran over it while performing her duties at work. There is no dispute that the cart ran over her right foot in the performance of duty. The Board finds that the first component of fact of injury, the claimed incident -- appellant's right foot was run over by an APC cart, occurred as alleged.

The Board notes that the medical evidence submitted by appellant generally supports that appellant's foot was run over by a cart and that she sustained a right foot sprain or midfoot arthropathy in the performance of duty on September 17, 2003. The record contains an October 8, 2003 x-ray read by Dr. Ahmed, which showed the possibility of a "questionable fracture." The October 9, 2003 report of Dr. Davis, supports that a cart ran over appellant's right foot on September 17, 2003 and caused her to sustain a right foot sprain. Dr. Dillin also diagnosed right foot pain on October 20, 2003. Although he provided some reports that apparently relied on incorrect information regarding the number of hours per week worked by appellant, he did have an accurate history of the September 17, 2003 incident.[9]

In his January 19, 2004 report, Dr. Dillin attributed appellant's right midfoot arthropathy to the direct trauma of the cart rolling over her foot on September 17, 2003. Dr. Dillin accurately and correctly described the mechanism of injury through which appellant's arch was disrupted by the weight placed upon her foot by the cart. He also suggested that this may have aggravated preexisting degenerative change in her foot. Although Dr. Dillin's reports are not sufficiently rationalized to meet appellant's burden of proof in establishing her claim, they stand uncontroverted in the record and are sufficient to require further development of the case.[10]

Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While the appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[11]

The Board will remand the case to the Office for referral to an appropriate medical specialist to determine the extent of any injury or aggravation of any preexisting conditions as a result of her employment injury on September 17, 2003. Following this, and any other further

[8] *Id*.

[9] *See Vernon R. Stewart*, 5 ECAB 276, 280 (1953) (where the Board held that medical opinions based on histories that do not adequately reflect the basic facts are of little probative value in establishing a claim).

[10] *John J. Carlone*, *supra* note 7; *Horace Langhorne*, 29 ECAB 820 (1978).

[11] *John W. Butler*, 39 ECAB 852 (1988).

development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2004 decision of the Office of Workers' Compensation Programs' hearing representative is set aside and the case is remanded for further development in accordance with this decision of the Board.

Issued: August 19, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board