



## **FACTUAL HISTORY**

On September 30, 2004 appellant, then a 40-year-old industrial equipment maintenance worker, filed a traumatic injury claim alleging that on September 16, 2004 he sustained a torn left Achilles tendon when he stepped into a groundhog hole, lunged forward and fell backward. He indicated that there were no witnesses to the incident. In a statement dated December 17, 2004, Roy Joseph, appellant's supervisor, stated that appellant had injured his Achilles tendon when he stepped in a groundhog hole at work.

In a report dated September 20, 2004, Dr. Stephen K. Dyal, a Board-certified internist specializing in emergency medicine, stated that appellant had been experiencing pain in his left Achilles tendon and diagnosed Achilles tendinitis.

In reports dated September 21 and 30, 2004, Dr. Gregory P. Guyton, an attending orthopedic surgeon, stated that appellant had a chronic inflammatory condition of his Achilles tendon, which was exacerbated recently when he stepped into a hole at work. He provided findings on physical examination and diagnosed chronic left Achilles tendinitis with an acute partial tendon rupture caused by the work incident. He recommended surgery. In reports dated October 14 to December 8, 2004, Dr. Guyton indicated that appellant had a surgical Achilles tendon repair on October 14, 2004 and his condition had improved.

By decision dated January 4, 2005, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained an injury on September 16, 2004 at the time and place and in the manner alleged, causally related to his employment.

By letter dated February 17, 2005, appellant requested a review of the written record.

By decision dated April 4, 2005, the Branch of Hearings and Review denied appellant's request for a review of the written record on the grounds that the request was untimely and the issue in the case could be addressed equally well through a reconsideration request and the submission of additional evidence.

Appellant requested reconsideration and submitted a February 16, 2005 report from Dr. Guyton, who reiterated his opinion that the September 16, 2004 work incident was a direct cause of an acute partial rupture of the Achilles tendon and exacerbated his chronic preexisting Achilles tendinitis.

By decision dated May 5, 2005, the Office denied modification of its January 4, 2005 decision.<sup>1</sup>

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<sup>1</sup> Appellant submitted additional evidence subsequent to the Office decision of May 5, 2005. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden to establish the essential elements of his 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, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.<sup>4</sup> Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>5</sup> An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.

To establish a causal relationship between appellant's condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's 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.<sup>6</sup>

## ANALYSIS

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. Appellant alleged that on September 16, 2004 he sustained injury when he stepped into a groundhog hole, lunged forward and fell backward. There were no witnesses to the incident. The employing establishment did not challenge the claim and appellant's supervisor stated that appellant had injured himself when he stepped in a groundhog hole at work. The Board finds that the evidence of record is sufficient to

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> *Shirley A. Temple*, 48 ECAB 404 (1997).

<sup>6</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *see id.*

establish that the September 16, 2004 work incident occurred at the time, place and in the manner alleged.

The second issue is whether the medical evidence is sufficient to establish that appellant sustained an injury causally related to the September 16, 2004 work incident.

Dr. Guyton, an attending orthopedic surgeon, indicated that appellant had a chronic inflammatory condition of his Achilles tendon which was exacerbated when he stepped into a hole in the ground at work. He provided findings on physical examination and diagnosed chronic left Achilles tendinitis with an acute partial tendon rupture caused by the work incident. In a February 16, 2005 report, Dr. Guyton reiterated his opinion that the September 16, 2004 work incident when appellant stepped into a hole was a direct cause of an acute partial rupture of the Achilles tendon and exacerbated his chronic preexisting Achilles tendinitis. While Dr. Guyton's medical reports do not contain sufficient medical rationale explaining how appellant's chronic left Achilles tendinitis was exacerbated by the September 16, 2004 work incident, they support that appellant had an aggravation of his preexisting Achilles tendinitis following the September 16, 2004 incident and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet appellant's burden of proof to establish his claim, they raise an uncontroverted inference of causation between the September 16, 2004 work incident and the exacerbation of his chronic Achilles tendinitis and are sufficient to require further development of the medical evidence.<sup>7</sup>

### CONCLUSION

The Board finds that this case requires further evidentiary development on the issue of whether appellant sustained an aggravation of his left Achilles tendinitis on September 16, 2004 causally related to his employment.<sup>8</sup>

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<sup>7</sup> See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978). The Board notes that, in the present case, the record contains no medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion. Additionally, the Office's procedure manual provides that a claims examiner may need to seek clarification from an attending physician in order to fully develop and evaluate the medical evidence. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.8 April 1993).

<sup>8</sup> In light of the Board's resolution of the first issue in this case, the second issue is moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 5, April 4 and January 4, 2005 are set aside and the case is remanded for further development consistent with this decision.

Issued: November 9, 2005  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

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