United States Department of Labor
Employees' Compensation Appeals Board

T.S., Appellant **and** **U.S. POSTAL SERVICE, CHANUTE POST OFFICE, Chanute, KS, Employer**	))))))))	**Docket No. 08-963** **Issued: August 19, 2008**

Appearances:
Appellant, *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 February 14, 2008 appellant filed a timely appeal from September 20, 2007 and January 29, 2008 decisions of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that he sustained a right foot injury in the performance of duty.

FACTUAL HISTORY

On July 30, 2007 appellant, then a 38-year-old letter carrier, filed a traumatic injury claim (Form CA-1) asserting that on April 21, 2005 he sustained a possible fracture of the right great toe when he tripped on an uneven sidewalk as he exited his postal vehicle. He did not stop work. An April 22, 2005 employing establishment accident report noted that, while on duty on April 21, 2005, appellant exited his vehicle and stubbed his toe.

In an August 20, 2007 letter, the Office advised appellant of the additional medical and factual evidence needed to establish his claim. It emphasized the importance of corroborating the claimed incident and submitting rationalized medical evidence explaining how and why that incident caused the claimed injury. Appellant was afforded 30 days to submit additional evidence.

By decision dated September 20, 2007, the Office denied appellant's claim on the grounds that fact of injury was not established. It found that appellant established that the April 21, 2005 incident occurred as alleged; however, he did not submit medical evidence establishing that the incident caused the claimed injury.

In a November 5, 2007 letter, appellant requested reconsideration. He asserted that his right big toe was misaligned and had "a large knot," causing increased pressure on the ball of the foot. In an April 26, 2007 employing establishment health clinic report, Dr. Lucy Limaylla, a family practitioner, noted appellant's account of a possible great toe fracture two years prior while delivering mail. She recommended a podiatric evaluation as appellant experienced pain at the base of the second toe on the right foot and his right "big toe d[id] not touch ground when walking."

In a May 3, 2007 report, Dr. John M. King, an orthopedic surgeon conducted a fitness-for-duty evaluation for the employing establishment. He noted that appellant injured his right great toe two years prior when he tripped at work. On examination, Dr. King noted that appellant's right great toe sat 15 degrees from the floor. He diagnosed an "[o]ld injury to the great toe," metatarsalgia and possible scar tissue.

In an October 8, 2007 report, Dr. Jeffrey D. Hogge, an attending podiatrist, related appellant's account of having "kicked into something a couple of years back." He diagnosed stress overload syndrome in the right second metatarsophalangeal joint.[1]

By decision dated January 29, 2008, the Office denied the claim on the grounds that causal relationship was not established.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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; that an injury was sustained while 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

[1] In a December 1, 2007 e-mail, the employing establishment asserted that appellant wore approved footwear when delivering mail.

[2] 5 U.S.C. §§ 8101-8193.

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

elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

In order to determine whether an employee sustained a traumatic 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 that must be considered jointly. First, the employee must submit sufficient evidence to establish that he or she actually experienced the alleged employment incident.[5] 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.[6]

ANALYSIS

On April 21, 2005 appellant stubbed his toe at work while exiting his delivery vehicle. The Office accepted the incident occurred as alleged; however, it denied the claim on the grounds that the medical evidence was insufficient to establish that the accepted incident caused the claimed injury.

Appellant submitted an October 8, 2007 report by Dr. Hogge, an attending podiatrist, who stated that appellant "kicked into something a couple of years back" but did not specifically identify the April 21, 2005 incident. The vagueness of this history of injury diminishes the probative value of his report.[7] Dr. Hogge diagnosed stress overload syndrome in the right second metatarsophalangeal joint but did not provide medical rationale explaining how and why the accepted April 21, 2005 incident caused or contributed to that condition. The lack of rationale diminishes the probative value of Dr. Hogge's opinion.[8]

Similarly, Dr. Limaylla, an employing establishment physician, and Dr. King, a fitness-for-duty physician, both noted an injury to the right great toe two years prior. However, they did not mention the April 21, 2005 incident. Dr. King diagnosed an old injury to the right great toe and metatarsalgia but did not relate these conditions to the April 21, 2005 incident. Neither physician provided an accurate history of injury or medical rationale supporting causal relationship. On August 20, 2007 the Office advised appellant of the need to submit rationalized medical evidence explaining how and why the April 21, 2005 incident caused his claimed right foot condition. Appellant did not submit such evidence and failed to meet his burden of proof.

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[4] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Gary J. Watling*, 52 ECAB 278 (2001).

[6] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[7] *M.W.*, 57 ECAB 710 (2006).

[8] *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

CONCLUSION

The Board finds that appellant has not established that he sustained a right foot injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 29, 2008 and September 20, 2007 are affirmed.

Issued: August 19, 2008
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