

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

L.E., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bustleton, PA, Employer**

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**Docket No. 13-845
Issued: July 15, 2013**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 26, 2013 appellant, through his attorney, filed a timely appeal of the November 29, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he sustained an injury in the performance of duty on September 28, 2011, as alleged.

On appeal, appellant, through counsel, contends that, while there were elements of an occupational disease in his claim, appellant's condition worsened on September 28, 2011 while he was performing his letter carrier duties and, he sustained a traumatic injury. Counsel also

¹ 5 U.S.C. § 8101 *et seq.*

argues that OWCP erred in that it failed to combine this claim with appellant's occupational disease claim with regards to the same injury.

FACTUAL HISTORY

On October 4, 2011 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim alleging that on September 28, 2011, while delivering mail, his left foot below his ankle started to hurt. He alleged that he sustained tendinitis in left ankle. In an October 4, 2011 letter, a manager for the employing establishment stated that appellant noted that he did not fall, trip or slip or recall any traumatic incident while delivering on his route.

In a November 29, 2011 letter, appellant stated that on September 28, 2011, while delivering mail, he felt pain in his left foot below the ankle to the right side. He did not slip, trip, fall or twist his ankle. The pain occurred while walking to next delivery and subsided when he stopped work for a minute or two. Towards the end of the day it returned. Appellant believed that the injury itself was the result of repetitive daily impact on his ankle due to walking for the bulk of his workday and having been in his line of work for more than 31 years.

In a November 21, 2011 note, Dr. Bruce Bruszkoff, a podiatrist, noted that the onset of appellant's pain in his foot was gradual. He diagnosed tibialis posterior dysfunction of the left foot with pain.

By decision dated December 5, 2011, OWCP denied appellant's claim as he did not establish the causal relationship between the diagnosed condition and the accepted employment incident.

By letter dated May 3, 2012, appellant, through counsel, requested reconsideration and resubmitted his November 29, 2011 statement. In a February 28, 2012 report, Dr. William J. O'Brien, III, an osteopath, noted that appellant was seen for evaluation of injuries he sustained as a result of an employment-related accident which occurred on September 28, 2011. Appellant related that he had pain in his left foot for several months, that started sometime in September 2011, with September 28, 2011 being the date given. Dr. O'Brien diagnosed cystic changes at the navicular, tenosynovitis of the posterior tibial tendon, difficult walking and left foot pain. It was his medical opinion to a reasonable degree of medical certainty that appellant suffered a repetitive work injury to his left foot due to his employment-related job duties.

By decision dated June 25, 2012, OWCP denied modification of the December 5, 2011 decision. It determined that Dr. O'Brien did not explain how walking to the next delivery on September 28, 2011 caused the left foot condition.

By letter dated August 30, 2012, counsel requested reconsideration and submitted an August 14, 2012 report by Dr. Michael B. Fischer, an osteopath, who stated that appellant sustained an employment-related accident on September 28, 2011 when he developed pain in his left foot and ankle while at work. Appellant indicated that the pain was aggravated by walking and using steps. Dr. Fischer diagnosed left foot tendinitis/tenosynovitis, left foot pain and left ankle sprain/strain. He stated that to a reasonable degree of medical certainty appellant's injuries were a direct result of the employment-related accident which occurred on September 28, 2011.

Dr. Fischer noted that there was a direct causal relationship between appellant's symptoms and his work over the past 31 years. He further opined that appellant sustained repetitive trauma to his left foot and ankle which became most painful on September 28, 2011.

By decision dated November 29, 2012, OWCP denied modification of its prior decisions. It found that the report of Dr. Fischer did not establish a direct relationship between an employment-related accident on September 28, 2011 and appellant's medical condition. OWCP noted that Dr. Fischer indicated that there was a direct causal relationship between appellant's symptoms and the ongoing work he has been doing for 31 years, which would constitute an occupational disease.

LEGAL PRECEDENT

OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.² An employee seeking benefits under FECA 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, 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. 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.³

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP 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 or exposure, which is alleged to have occurred.⁴ In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁵

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical

² 20 C.F.R. § 10.5(e).

³ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁵ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁶ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

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.⁷

ANALYSIS

Appellant alleged a traumatic injury during the performance of his federal duties on September 28, 2011. OWCP denied his claim as he failed to establish a causal relationship between the injury to his left foot and ankle conditions and his employment activities of September 28, 2011.

Appellant has not submitted sufficient medical evidence to establish that he sustained a traumatic injury as a result of his work activities of September 28, 2011. On the contrary, the medical evidence appears to suggest that any injury to appellant was sustained over a period of time and was not as the result of his performance of employment duties on September 28, 2011. Dr. Bruskoff noted that the onset of appellant's tibialis posterior dysfunction in his left foot was gradual. Dr. O'Brien opined that appellant suffered a repetitive work injury to his left foot due to his employment-related job duties, but did not limit the cause of the injury to a September 28, 2011 incident. Dr. Fischer opined that appellant's left foot tendinitis/tenosynovitis, left foot pain and left ankle sprain/strain were the direct result of the employment-related accident that occurred on September 28, 2011. However, he failed to describe any notable incident of September 28, 2011 and he also indicated that the injury was a direct result of appellant's ongoing work that he had performed over the past 31 years. The primary difference between a traumatic injury and an occupational disease is that a traumatic injury must occur within a single work shift while an occupational disease occurs over more than one work shift.⁸ The evidence does not establish that appellant sustained a traumatic injury on September 28, 2011. The Board notes that a claimant may expand his claim at anytime. Appellant appears to be claiming a different type of injury, an occupational disease or illness, stemming from different factors of employment. He may pursue this by filing the appropriate claim form. This is not a matter to be decided by OWCP on reconsideration of appellant's claim for a traumatic injury.⁹ Accordingly, as there is no evidence that appellant sustained a traumatic injury on September 28, 2011, he has not met his burden of proof to establish his claim.

The Board notes that counsel argued on appeal that OWCP should have combined this claim with appellant's claim for an occupational disease. However, there is no evidence of record that appellant filed a claim for occupational disease.

⁷ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

⁸ *See* 20 C.F.R. §§ 10.5(ee), 10.5(q).

⁹ *See Karen A. Roulette*, Docket No. 06-634 (issued June 7, 2006).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty on September 28, 2011, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 29, 2012 is affirmed.

Issued: July 15, 2013
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board