U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SONDRA PERLMUTTER and DEPARTMENT OF VETERANS AFFAIRS, MEDICAL CENTER, Northport, N.Y.

Docket No. 96-331; Submitted on the Record;
Issued February 4, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that her stress fracture of the third metatarsal of the right foot was sustained in the performance of duty on October 4, 1994, as alleged.

The Board has reviewed the case record and finds that appellant has not met her burden of proof in establishing that she sustained a foot injury in the performance of duty on October 4, 1994, as alleged.

On October 7, 1994 appellant, then a 59-year-old clerk-typist, filed a notice of traumatic injury and claim for pay/compensation (Form CA-1) alleging that she sustained a stress fracture of the third metatarsal of the right foot, in the performance of duty on October 3, 1994.[1] Appellant reported that she sustained the above injury, when a pack of xerox paper fell from a height of approximately 12 inches onto her foot. Appellant stopped work on October 7, 1994.

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 timely filed within the applicable time limitation period 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]

---

[1] The record contains conflicting evidence pertaining to the exact date of injury. The CA-1 form, which was completed on appellant's behalf by her supervisor, states October 3, 1994 as the date of injury. In her testimonial evidence before an Office of Workers' Compensation Programs' hearing representative, appellant alleged that her injury occurred on October 4, 1994 and that she informed her supervisor of the mistake in the date. The Office hearing representative, on September 14, 1995, accepted the date of injury as being October 4, 1994. Accordingly, the Board accepts the date of the alleged injury to be October 4, 1994.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

There is no dispute that appellant is a federal employee, that she timely filed her claim for compensation benefits and that the employment incident occurred on October 4, 1994, as alleged. However, the medical evidence is insufficient to establish that appellant sustained an injury in the performance of duty on October 4, 1994.

In the present case, the record indicates that appellant was seen by her primary care physician on October 5, 1994, complaining of foot pain and was referred to a podiatrist. Dr. Eric L. Schwartz, a podiatrist, examined appellant on October 6, 1994 and diagnosed a stress fracture of the third metatarsal of the right foot. With respect to the causal relationship, Dr. Schwartz opined, in reports dated October 13, November 17 and November 29, 1994 that "while it is possible that the incident described could have caused the injury, we first saw patient two days after the injury; therefore, we cannot be completely certain of the etiology." Part of an appellant's burden of proof includes the submission of rationalized medical evidence based upon a complete factual and medical background showing causal relationship between the claimed injury and employment factors.[4] As Dr. Schwartz's opinion on the above reports are couched in terms of possibility and uncertainty, they are insufficient to establish appellant's claim. Additionally, the fact that the etiology of the disease is unknown or obscure does not shift the burden of proof to the Office to disprove an employment relationship, neither does the absence of a known etiology for her condition relieve appellant of the burden of establishing a causal relationship by the weight of the evidence, which includes affirmative medical opinion based on material facts with supporting rationale.[5] Moreover, on October 11, 1994, Dr. Schwartz noted that appellant "thinks" that her foot pain began after "she dropped a package of xerox paper on her foot at work." A physician's report which merely restates an employee's belief on causal relationship is of no probative value, as causal relationship is medical in nature and must be addressed by a physician.[6] Furthermore, the Board has noted that neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by employment conditions is sufficient to establish causal relation.[7]

Appellant was examined by Dr. Richard S. Goodman, a Board-certified orthopedic surgeon, on April 10, 1995, because of continuing pain in her right foot. In his report dated April 27, 1995, Dr. Goodman opined that the October 6, 1994 x-rays were not diagnostic and diagnosed a contusion of the foot pending review of further x-ray studies. After reviewing the x-ray studies, Dr. Goodman, in a letter dated June 27, 1995, diagnosed a healed fractured third metatarsal secondary to the on-the-job injury of October 1994. Although Dr. Goodman's history of injury was consistent with that of appellant's and Dr. Schwartz's, Dr. Goodman failed to explain how the mechanism of the October 4, 1994 employment incident resulted in a right foot fracture, requiring medical treatment.

[4] *See Mary J. Briggs*, 37 ECAB 578 (1986); *Joseph T. Gulla*, 36 ECAB 516 (1985).

[5] *Ronald K. White*, 37 ECAB 176 (1985).

[6] *See Sheila Arbour (Victor E. Arbour)*, 43 ECAB 779 (1992); *Constance G. Mills*, 40 ECAB 317 (1988).

[7] *Bruce E. Martin*, 35 ECAB 1090 (1984); *Margaret A. Donnelly*, 15 ECAB 40 (1963); *Dorothy P. Goad*, 5 ECAB 192 (1952).

The record additionally indicates that Dr. Adrienne Levy, a Board-certified anesthesiologist and Chief of Anesthesia Service at the employing establishment, submitted an October 7, 1994 memorandum, written in support of the employing establishment's controversion of the claim, in which she opined that "[i]n my capacity as a medical doctor [and] based on the extensive history that I have taken from [appellant], I do not believe that the mechanism of [appellant's] injury was the alleged xerox paper incident." The record further reflects an electronic mail message dated October 24, 1994 from Dr. Peter C. Altner, a Board-certified orthopedic surgeon and Chief of Orthopedic Surgery at the employing establishment, responding to Dr. Levy's request for an expert opinion pertaining to a fracture of a metatarsal bone. Dr. Altner opined:

> "[A] stress fracture is a fracture which occurs over a period of time due to abnormal usage of a foot, such as running without previous training. A stress fracture in the initial stages may not show up on x-rays. After approximately two weeks, the patient shows signs of healing and callus formation. A stress fracture does not occur as a result from directly dropping an object on the foot one time."

Dr. Altner's opinion, in contrast to the opinion of Dr. Levy, provided a medical basis explaining why the mechanism of appellant's employment incident did not result in a fracture. Accordingly, the Board finds that appellant has not met her burden of proof and the Office properly denied her claim.

The decisions of the Office of Workers' Compensation Programs dated September 13, 1995 and finalized September 14, 1995 and January 4, 1995 are hereby affirmed.

Dated, Washington, D.C.
February 4, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member