U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BOBBY L. SPEAKMAN and U.S. POSTAL SERVICE,
POST OFFICE, Hoover, Ala.

Docket No. 97-1722; Submitted on the Record;
Issued June 21, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has established that he sustained an injury in the performance of duty on February 13, 1995.

In the present case, the Office of Workers' Compensation Programs received on July 28, 1995 a claim for traumatic injury in which appellant alleged that on February 13, 1995 he sustained a left foot stress fracture while emptying a mail box. On the reverse side of the form, the employing establishment stated that "appellant did not say he had injured himself at work until nine days later and he thought it was from a previous accident." By decision dated November 7, 1995, the Office denied appellant's claim on the grounds that fact of injury was not established. This decision was affirmed by an Office hearing representative on March 26, 1996. The Office subsequently denied modification on August 22 and November 19, 1996 and February 13, 1997.

The Board has reviewed the case record and finds that appellant has not established that he sustained an injury in the performance of duty on February 13, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that he or she sustained an injury while in the performance of duty.[2] In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the

[1] 5 U.S.C. §§ 8101-8193.

[2] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.110(a).

employment incident caused a personal injury and generally this can be established only by medical evidence.[3]

In this case, appellant submitted multiple medical records from Dr. Walter D. Clark, appellant's treating podiatrist. In a September 13, 1994 medical report, Dr. Clark stated that he had examined appellant on August 26, 1994 for bilateral hallux abducto valgus which, based on the painful nature of the condition and appellant's requirement to stand for a long duration of time caused bunions to progress. He recommended surgical intervention for correction. In a medical report dated February 22, 1995, Dr. Clark stated that appellant had a fracture of the right second metatarsal. In a July 18, 1995 medical report, he stated that appellant had pain in the third, fourth and fifth metatarsal heads bilateral as well as generalized foot discomfort.

In a September 11, 1995 medical report, Dr. Clark reviewed appellant's history of injury stating that appellant had a splay-type foot which was symptomatic with pain since August 1994, that he had performed surgery to remove bunions on September 26, 1994 and that on February 22, 1995 appellant related pain in the left second metatarsal shaft. He further noted that on April 26, 1995 appellant related pain in the left third interface consistent with Morton's neuroma as well as tenderness along the dorsal medial aspect of the first metatarsal joint near the head of the metatarsophalangeal joint and positive Mulder's sign consistent with Morton's neuroma; that on May 5, 1995 Dr. Clark excised an interdigital neuroma of the left third interspace and dorsal bump of the first metatarsophalangeal joint; that on July 10, 1995 appellant noted pain and discomfort in both arches, heels and balls of both feet; that on July 17, 1995 appellant complained of pain in the third, fourth and fifth metatarsophalangeal joint. Appellant stated it was impossible to stand, that the prescribed steroids did not work and that the orthotic devise was not useful. He stated: "It is possible that at this point, the severity of his job performance will not allow him to stand for long periods of time or lift heavy weights." With all the problems he is having with his feet appellant may have to go to a limited type of work rather than light duty so that he will continue to be able to perform some type of functional work at his occupation. Dr. Clark also noted some degenerative osteoarthritis and some heel spurs bilateral and stated that his particular medical situation has stabilized and will probably not deteriorate further, but that if appellant is to continue to walk and stand for long periods of time he would experience unbearable discomfort which would make him sit down. However, none of these reports established that appellant's condition was caused by the alleged incident of February 13, 1995 and indeed established that appellant had a preexisting left foot condition for which appellant had received treatment six months prior to his claim. Since Dr. Clark provided no rationalized medical opinion which related appellant's condition to the alleged February 13, 1995 incident none of the reports have probative value in establishing a causal relationship between appellant's medical condition and the claimed February 13, 1995 incident.[4]

In a June 12, 1996 medical report, Dr. Clark stated that appellant had been treated on February 17, 1995 by Dr. Thomas Godfryd, a podiatrist, for left foot pain and discomfort near the second metatarsal base and that appellant had related that he had sustained a work-related injury on February 13, 1995. He noted that x-rays revealed very slightly displaced complete oblique fracture at the base of the second metatarsal. Dr. Godfryd also stated that x-rays clearly

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

[4] *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

indicated fracture of the area … which was possibly due to work injury sustained February 13, 1995. This report is insufficient to establish appellant's claim because it fails to establish Dr. Godfryd's awareness of the alleged incident or of appellant's activities from the date of the incident to the date appellant filed his claim. Further, the report is speculative in that the he opined that appellant's fracture was possibly the result of a February 13, 1995 work-related injury. The Board has held that an award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.[5]

In a September 6, 1996 medical report, Dr. Clark stated that appellant implied … that he hurt his foot a few days before, approximately the 13th of February and I can only assume that injury at work was what brought appellant to see Dr. Godfryd. He also noted that the healing process occurred from February 17 to April 26, 1995. This report is insufficient to establish appellant's claim because it is speculative with respect to the fact and cause of injury.[6] Dr. Clark's statement that he assumed that appellant sustained a work-related injury on February 13, 1995 is insufficient to establish fact of injury.

Although appellant was notified by the Office of the deficiencies in the medical evidence submitted in relation to his claim, he did not submit sufficient medical evidence to meet his burden of proof to establish that his claimed condition of left foot stress fracture was sustained as alleged.

The decisions of the Office of Workers' Compensation Programs dated February 13, 1997, November 19 and August 22, 1996 are affirmed.

Dated, Washington, D.C.
June 21, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

[5] *Alberta S. Williamson*, 47 ECAB 569 (1996).

[6] *Id.*