

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GUY HARRELL, JR. and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, La.

*Docket No. 97-2507; Submitted on the Record;
Issued May 10, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that his left leg below-the-knee amputation was causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a hearing under 5 U.S.C. § 8124.

On July 1, 1996 appellant, then a 49-year-old letter carrier, filed a claim alleging that he developed a severe neuropathic left ankle joint which ended with a below-the-knee amputation, causally related to 20 years of walking mail routes. The employing establishment human resources specialist noted that appellant had been on light duty due to his diabetic condition and had accepted disability retirement effective May 24, 1996.

A February 27, 1996 report, from Dr. L. Becnel, a Board-certified orthopedic surgeon, diagnosed osteomyelitis, affected by a neuropathic joint, diabetes mellitus and an incision and drainage and debridement of the left foot. Causation was not discussed.

By report dated February 28, 1996, Dr. Jeffrey J. Sketchler, a Board-certified orthopedist, noted that appellant had a severe neuropathic foot with deep infection, that he had total destruction of all joints essentially in the foot and ankle and that amputation was probably necessary.

By report dated June 19, 1996, Dr. Sketchler noted that for years appellant "worked as a postal worker with a route that involved walking. This in combination with his diabetes lead to the collapse of his foot [and] secondary infection ensued. Thereafter it became severe and he lost his lower leg."

By letter dated September 24, 1996, the Office requested further information including a description of the employment factors implicated in causing his condition and a medical

narrative explaining causal relation with his employment. Appellant's responses were incomplete.

By decision dated November 1, 1996, the Office rejected appellant's claim finding that the evidence of record failed to establish that his left lower leg amputation was causally related to his federal employment. The Office found that Dr. Sketchler's opinion that appellant's continuous walking caused or contributed to his left below the knee amputation was unrationalized.

By letter dated February 3, 1997, appellant, through his representative, requested an oral hearing and in support he submitted further medical evidence relating his years of walking as a mail carrier to the changes creating an unstable foot which required a brace which caused further breakdown resulting in infection and subsequent amputation.

By decision dated April 17, 1997, the Branch of Hearings and Review noted that appellant was not, by right, entitled to a hearing as his request was made more than 30 days after the date of the Office decision and it denied his request finding that the issue in question could be equally well addressed by requesting reconsideration from the Office and submitting further relevant evidence.

The Board finds that this case is not in posture for a decision.

Proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.¹ This holds true in occupational claims as well as in initial traumatic injury claims. In the instant case, although none of appellant's treating physicians' reports contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that he developed a severe neuropathic joint and osteomyelitis which ultimately required a below the knee amputation, causally related to walking in the course of his federal employment, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship, that is sufficient to require further development of the case record by the Office.² Additionally, there is no opposing medical evidence in the record.

Therefore, this case will be remanded to the Office for development of a statement of accepted facts, questions to be answered and referral to an appropriate specialist for a rationalized opinion on whether factors of appellant's federal employment caused or aggravated his left foot breakdown which resulted in the amputation.³

¹ *William J. Cantrell*, 34 ECAB 1223 (1983).

² *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

³ As the Board is finding this case not in posture, it is not now necessary to address the subsequent denial of a hearing.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated April 17, 1997 and November 1, 1996 are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, D.C.
May 10, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member