

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORY J. MORGAN and U.S. POSTAL SERVICE,
POST OFFICE, Boston, MA

*Docket No. 98-1592; Submitted on the Record;
Issued November 9, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on March 27, 1998.

The Board has duly reviewed the case on appeal and finds it not in posture for decision.

On August 8, 1997 appellant, then a 40-year-old casual letter carrier, filed a claim alleging on July 21, 1997 he injured his left foot while distributing mail. By decision dated December 4, 1997, the Office denied appellant's claim finding that he failed to establish fact of injury. Appellant requested reconsideration on March 4, 1998. The Office declined to reopen appellant's claim for consideration of the merits by decision dated March 27, 1998.

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.¹ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.² Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.³

In this case, the Office did not dispute that appellant performed the duties of his position, distributing bulk mail from 4:30 a.m. to 6:00 a.m. on July 21, 1997. Appellant alleged that he felt a sudden sharp pain in his left foot at approximately 6:00 and that he thought that he sprained his foot bending to pick up mail. Appellant stopped work at that time and sought medical treatment.

In the initial treatment note dated July 21, 1997, Dr. Glenn Dudley, a general practitioner, noted appellant's history of injury as carrying mail and noticing pain in the top of the left foot. He noted that appellant stated that the pain felt as if he had dropped something on his foot although he had not. Dr. Dudley also noted that appellant had ridden his bicycle for 45 miles on July 20, 1997.

A treatment note dated July 21, 1997 from a physician whose signature is illegible diagnosed strained left foot, noted onset of left foot pain and stated that there was no known injury. On July 28, 1997 a physician diagnosed strained left foot and indicated with a check mark "yes" that this condition was work related. A July 29, 1997 x-ray report found a non-displaced fracture of the second metatarsal consistent with a stress fracture.

These reports contain a history of injury, diagnosis and an opinion that appellant's condition was causally related to his employment duties on July 21, 1997. While these reports are not sufficient to meet appellant's burden of proof, they do raise an uncontroverted inference of causal relation between appellant's accepted employment incident on July 21, 1997 and an exacerbation of his diagnosed condition and are sufficient to require the Office to undertake further development of appellant's claim.⁴

On remand the Office should refer appellant, a statement of accepted facts and a list of specific questions to an appropriate physician to determine whether his accepted employment duties on July 21, 1997 caused either his diagnosed conditions of left foot strain or stress fracture. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.⁵

³ *James Mack*, 43 ECAB 321 (1991).

⁴ *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

⁵ Due to the disposition of this issue, the Board finds that it is not necessary to consider the issue of whether the Office abused its discretion in refusing to reopen appellant's claim for review of the merits.

The decision of the Office of Workers' Compensation Programs dated December 4, 1997 is hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
November 9, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member