

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HORACE O. CERVANTEZ and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

*Docket No. 98-1503; Submitted on the Record;
Issued January 11, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an injury while in the performance of duty on September 1, 1997.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained an injury while in the performance of duty on September 1, 1997.

On October 29, 1997 appellant, a 44-year-old mail carrier, filed a claim alleging that he was suffering from an Achilles tendon due to over 12 years of constant standing, bending and walking through various surfaces, carrying extra weight and climbing stairs. Appellant stated that he first became aware of his condition on September 1, 1997. In an October 28, 1997 statement, appellant described the condition of his right foot and what his physician's told him. Also submitted were medical work status reports from Dr. Fredrick Wilson, a Board-certified surgeon, releasing appellant to modified duty. Appellant did not stop work.

By letter dated December 10, 1997, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was not sufficient to make a determination as to whether appellant was eligible for benefits. Appellant was asked to submit medical evidence regarding his Achilles tendon condition and factual evidence addressing whether he had sustained any previous orthopedic injuries. He submitted the requested factual information and stated that Dr. Wilson would be sending in the medical information.

By decision dated February 23, 1998, the Office found the evidence of record sufficient to establish that appellant experienced the claimed employment factor. The Office, however, found the requested medical documentation had not been received and that the medical evidence

of record was insufficient to establish that appellant sustained a medical condition as a result of the claimed factors of employment. Accordingly, the Office denied appellant's claim.¹

An employee seeking benefits under the Federal Employees' Compensation Act² 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 limitations 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 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.⁴

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.⁵ In this case, the Office accepted that appellant actually experienced the claimed employment factor. The Board finds that the evidence of record supports this determination.

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.⁶ In the instant case, appellant has submitted no rationalized medical evidence establishing that he sustained a medical condition causally related to the claimed factors of his federal employment.

The only medical evidence before the Office at the time of its decision were work status reports dated October 28, 1997 from Dr. Wilson releasing appellant to modified duty with restrictions. These work status reports, however, are insufficient to establish appellant's burden because there is no indication as to what condition requires appellant to be on limited duty and

¹ The Office received evidence from appellant on February 25, 1998 and on April 13, 1998, all which were subsequent to the February 23, 1998 decision. The Board does not have jurisdiction to review evidence that was not before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Daniel J. Overfield*, 42 ECAB 718 (1991).

⁵ *Elaine Pendleton*, *supra* note 3.

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

explain how that condition relates to appellant's employment.⁷ Appellant was informed of the specific deficiencies in those reports in the Office's letter of December 10, 1997.

Inasmuch as appellant has failed to submit medical evidence establishing that he sustained a medical condition causally related to the claimed factors of his federal employment, the Board finds that he has failed to satisfy his burden of proof.

The February 23, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
January 11, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Daniel Deparini*, 44 ECAB 657, 659 (1993).