

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES L. WILSON and DEPARTMENT OF THE ARMY, AREA
MAINTENANCE SUPPORT ACTIVITY MAINTENANCE SHOP BAY II,
Sioux City, IA

*Docket No. 99-1829; Submitted on the Record;
Issued July 21, 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 a right foot injury in the performance of duty.

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 a right foot injury in the performance of duty.

On March 5, 1998 appellant, then a 49-year-old heavy mobile equipment repairer, filed a traumatic injury claim (Form CA-1) alleging that, on December 18, 1997, he sustained a ruptured tendon in his right foot in the ankle area. Appellant stated that he believed that the injury happened when he was attempting to climb onto the fender of a tractor truck in the shop. Appellant stopped work on February 27, 1998. Appellant's claim was accompanied by medical evidence.

By letter dated April 6, 1998, the Office of Workers' Compensation Programs advised appellant that the medical evidence submitted was insufficient to establish his claim. The Office also advised appellant to submit additional factual and medical evidence. In response, appellant submitted medical and factual evidence.

By decision dated May 8, 1998, the Office found the medical evidence of record insufficient to establish that appellant sustained a right foot injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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

¹ 5 U.S.C. §§ 8101-8193.

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.² 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.³

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.⁴ 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.⁵

In the present case, the Office denied appellant's claim on the grounds that he failed to submit rationalized medical evidence explaining what caused his medical condition. Appellant submitted the medical treatment notes of Dr. S. Sana covering the period January 24, 1997 through February 20, 1998. Dr. Sana's treatment notes, specifically, his December 19, 1997 and February 20, 1998 treatment notes, failed to address whether appellant had a right foot condition caused by the December 18, 1997 incident.

Appellant also submitted a March 10, 1998 attending physician's report (Form CA-20) of Dr. Kham Vay Ung, a podiatrist, revealing a history of the December 18, 1997 incident, a diagnosis of ruptured post-tibial tendon Type I and intersubstance tear of the right foot. Dr. Ung indicated that appellant's condition was caused by employment activity by placing a checkmark in the box marked "yes." He explained that "[p]ressure on the foot could have caused this type of tear." The Board has held that, while the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,⁶ neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.⁷ The Board finds that

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718 (1991).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *See John M. Tornello*, 35 ECAB 234 (1983); 20 C.F.R. § 10.110(a).

⁶ *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

⁷ *Phillip J. Deroo*, 39 ECAB 1294 (1988); *Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

Dr. Ung's statement that pressure on the foot "could have" caused the type of tear appellant sustained is speculative as to the cause of appellant's right foot condition. Therefore, it is of limited probative value.⁸ The Board notes that in the April 6, 1998 letter to appellant the Office specifically requested that appellant submit a report from Dr. Ung providing, *inter alia*, "well-reasoned detailed narrative medical rationale describing how the current diagnosis was caused by the December 18, 1997 incident and that you did not have to seek any treatment for over two months."

Appellant further submitted Dr. Ung's March 21, 1998 preoperative report and March 23, 1998 operative report concerning his right foot condition. Dr. Ung's reports, however, did not discuss the cause of appellant's condition.

Inasmuch as appellant has failed to submit rationalized medical evidence explaining how his right foot condition was caused by the December 18, 1997 incident as requested by the Office, the Board finds that appellant has failed to satisfy his burden of proof.

The May 8, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
July 21, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁸ See *Jennifer Beville*, 33 ECAB 1970 (1982); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).