U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HECTOR I. GONZALEZ and U.S. POSTAL SERVICE,
POST OFFICE, Newport Richey, FL

Docket No. 98-1305; Submitted on the Record;
Issued March 10, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

On January 20, 1995 appellant, then a 35-year-old letter carrier, filed a traumatic injury claim (Form CA-1) assigned number A06-0617075 alleging that on November 14, 1994 he injured his right ankle "while stepping out of my vehicle on U.S. 19 highway."[1] He stated that he "felt a sharp pain on my right ankle." Appellant did not stop work.

By letter dated February 24, 1995, the Office advised appellant to submit additional factual evidence regarding his injury.

The Office received the January 3, 1995 medical treatment notes of Dr. Sang H. Choi, a Board-certified orthopedic surgeon, indicating his findings on physical and objective examination and treatment of appellant's right ankle. He recommended that appellant undergo arthroscopic evaluation of the ankle.[2] The Office also received Dr. Choi's August 25, 1993 medical treatment notes revealing that appellant was status post ankle sprain and that he was doing well with occasional pain. He provided his findings on physical examination and

[1] Previously, appellant filed a claim assigned number 06-0435358 for an ankle fracture sustained on April 6, 1988. He filed a claim assigned number 06-0547289 for a sprain of the ankle and foot sustained on July 16, 1992. Appellant also filed a claim assigned number 06-0574730 for a right ankle sprain Grade III sustained on July 27, 1993. In a January 17, 1995 letter, the Office advised him to submit a Form CA-1 because the medical evidence indicated that he sustained a new injury. Subsequently, appellant filed the instant claim.

[2] By letter dated April 13, 1995, the Office advised appellant that his physician's request for authorization to perform arthroscopy surgery of the ankle was denied because the medical evidence of record did not indicate a causal relationship/preexisting condition.

appellant's treatment. Further, the Office received Dr. Choi's December 6, 1994 medical treatment notes providing that appellant recently resprained his right ankle. He noted appellant's problems with a prior left ankle injury and his findings on physical and objective examination. Dr. Choi diagnosed right ankle lateral gutter impingement secondary to chronic ankle sprain and with recent reinjury. He stated that he believed this was just chronic inflammation in this area.

In a March 10, 1995 response letter, appellant provided additional factual evidence regarding his employment injury.

By decision dated July 6, 1995, the Office found the evidence of record insufficient to establish that appellant sustained an injury as alleged. In an accompanying memorandum, the Office found the evidence of record sufficient to establish that the claimed incident occurred at the time, place and in the manner alleged, but insufficient to establish that appellant sustained a medical condition resulting from the accepted trauma or factors. In an August 1, 1995 letter, appellant requested an oral hearing before an Office representative.

At the hearing, appellant submitted the March 15, 1996 medical report of Dr. Barbara VanWinkle, a Board-certified orthopedic surgeon, revealing that he injured his right ankle in November 1994 when he sprained his right ankle while stepping out of his postal vehicle. She noted a history of appellant's medical treatment, her findings on physical examination, a review of x-ray results and a recommendation that appellant undergo vigorous rehabilitation. Dr. VanWinkle opined that appellant's continued problems with his right ankle arose from his on-the-job injury in November 1994 and that these problems have persisted since then, although appellant had tried to continue to work. She concluded that appellant's condition did not permit him to perform the physical duties of a letter carrier and recommended that appellant be retrained for an inside job with certain restrictions. Appellant also submitted the April 17, 1996 medical report of Dr. Brian E. McCarthy, a podiatrist. He noted appellant's complaints concerning his right ankle, appellant's recitation of a history of inversion ankle injury on November 14, 1994, his findings on physical examination and on review of previous radiographic results. Dr. McCarthy opined that based on the above findings, appellant's current complaints and symptoms would directly correlate with his statement and medical history. He diagnosed chronically unstable right ankle joint two degrees to severe ankle sprain. Dr. McCarthy further opined that the described injury "could certainly have caused" this type of ankle derangement and instability. Based on his knowledge of a letter carrier's duties, Dr. McCarthy believed that appellant would be greatly limited in his work duties and recommended that appellant undergo a lateral ankle stabilization procedure to allow for more stabile gait and ambulation. In addition, appellant submitted Dr. Choi's May 5, 1995 medical report noting that he had previously treated multiple sprains in appellant's ankle in July 1993 and a subsequent reinjury. He indicated appellant's symptoms concerning his right and left ankles and opined that these ankle injuries were a result of appellant's work, noting appellant's 1993 and 1994 work-related injuries. Appellant resubmitted Dr. Choi's August 25, 1993 and December 6, 1994 medical treatment notes.

By decision dated June 10, 1996, the hearing representative affirmed the Office's decision.

The Office received Dr. McCarthy's October 1, 1996 medical report providing a history of appellant's July 27, 1993 injury and November 14, 1994 employment injury. He reiterated his findings on physical examination and on review of prior radiographic results, his diagnosis and opinion regarding the cause of appellant's ankle condition as stated in his April 17, 1996 medical report.

In a January 8, 1997 letter, appellant, through his representative, requested reconsideration of the Office's decision accompanied by Dr. McCarthy's October 1, 1996 medical report.

In a March 4, 1997 decision, the Office denied appellant's request for modification based on a merit review of the claim. In an August 21, 1997 letter, appellant, through his counsel, requested reconsideration of the Office's decision accompanied by Dr. McCarthy's July 31, 1997 medical report. In this medical report, he indicated a review of medical records concerning appellant's left and right ankle injuries and a history of appellant's medical treatment and employment with the employing establishment. Dr. McCarthy noted appellant's July 1993 and November 1994 employment injuries. In describing the November 1994 employment injury, he stated, on that date, while stepping out of his postal vehicle to deliver the mail, appellant turned his foot and felt a sharp pain in his right ankle. Dr. McCarthy recommended an arthroscopic evaluation of appellant's ankle. He opined:

> "[F]rom the report of Dr. Choi and [appellant's] description of the injury to me and from my own examinations of the right ankle, I can state with reasonable medical certainty that stepping out of a postal vehicle and turning the right ankle which at that instant alone must bear the full weight of [appellant] is sufficient to injure the tendons and the ligaments in the right ankle. The ankle had been weakened due to the prior work-related injury in July 1993. Once the tendons are stretched by an ankle sprain, the ankle tends to weaken and become 'floppy,' a problem which can be exacerbated by a subsequent strain."

Dr. McCarthy concluded that appellant's November 14, 1994 employment injury was work related and was not caused by bilateral ankle weakness or disease.

By decision dated September 2, 1997, the Office denied appellant's request for modification based on a merit review of the claim. The Office found that Dr. McCarthy's July 31, 1997 medical report was based on an inaccurate history of the November 14, 1994 employment injury.

The Office received Dr. McCarthy's July 31, 1997 medical report previously of record.

By letter dated December 12, 1997, appellant, through his counsel, requested reconsideration of the Office's decision accompanied by Dr. McCarthy's December 9, 1997 medical report. In his medical report, Dr. McCarthy stated that based on a review of the medical records, appellant suffered an inversion injury of the right ankle due to the November 14, 1994 incident which was confirmed by his examination and stress radiographs. He noted that his diagnosis was consistent with that of Drs. VanWinkle and Choi. Dr. McCarthy also noted that his previous medical report was rejected because he stated that appellant's right ankle turned

when he stepped out of his postal vehicle on November 14, 1994 while appellant stated that he felt a sharp pain when he exited his postal vehicle, but that he did not turn or twist his ankle. He stated that he knew from experience and training that a misstep can cause an ankle sprain, that he, as well as, Drs. VanWinkle and Choi knew that appellant presented with a right ankle sprain after November 14, 1994. Additionally, Dr. McCarthy stated that their findings were confirmed by medical tests and observation. He also stated that whether the cause of the sprain was a turning of the ankle or a misstep when appellant stepped out of his vehicle, the result was a sprain to the right ankle. Dr. McCarthy concluded that the findings in his July 31, 1997 report remained valid.

In a January 12, 1998 decision, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that the evidence submitted was of a cumulative nature and thus, insufficient to warrant review of its prior decision.

The Board finds that appellant met his burden of proof to establish that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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.[4] 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.[5]

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.[6] In this case, the Office accepted that the November 14, 1994 incident occurred at the time, place and in the manner alleged. The Board finds that the evidence of record supports this incident.

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.[7] In the instant case,

[3] 5 U.S.C. §§ 8101-8193.

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Daniel J. Overfield*, 42 ECAB 718 (1991).

[6] *Elaine Pendleton, supra* note 4.

[7] 20 C.F.R. § 10.110(a); *see John M. Tornello*, 35 ECAB 234 (1983).

appellant has submitted rationalized medical evidence establishing that he sustained a medical condition causally related to the November 14, 1994 employment incident.

Although the Office found that Dr. McCarthy's July 31, 1997 medical report was insufficient to establish appellant's burden because it was based on an inaccurate factual background, the Board finds that the inaccuracy is insignificant inasmuch as the history provided Dr. McCarthy is similar to appellant's account of the November 14, 1994 employment incident. Thus, this inaccuracy is insufficient to discredit his report. Because Dr. McCarthy provided medical rationale to support his opinion that appellant's right ankle condition was caused by the November 14, 1994 employment incident, his report is sufficient to establish appellant's burden. The Board notes that there is no medical evidence of record negating a causal relationship between appellant's right ankle condition and his November 14, 1994 employment incident.

In view of the Board's finding that Dr. McCarthy's July 31, 1997 medical report is sufficient to establish that appellant established an employment injury as alleged, the two subsequent requests for reconsideration are deemed moot and the case is remanded for a determination of any period or periods of disability causally related to the November 14, 1994 employment incident.

The Office of Workers' Compensation Programs' September 2, 1997 decision is hereby reversed and the case is remanded to the Office for further consideration consistent with this decision.

Dated, Washington, D.C.
March 10, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member