U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDRIC HOLMES and U.S. POSTAL SERVICE,
CAMDEN POST OFFICE -- OAKLYN, Pennsauken, NJ

Docket No. 02-11; Submitted on the Record;
Issued August 28, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty.

On August 10, 1999 appellant, then a 40-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that as a result of his federal employment, he developed problems with his feet and lower legs. In support thereof, appellant submitted a report from Health Now Walk-In Center, indicating that he was seen on August 26, 1998 for an injury of the same date and that he was diagnosed with Achille's tendinitis. The evaluation notes indicate that he delivers mail and also that he lifts weights. The employing establishment controverted the claim.

By letter dated March 20, 2000, the Office of Workers' Compensation Programs requested further information. No further information was received and by decision dated May 22, 2000, the Office denied appellant's claim. The Office determined that appellant had not submitted evidence which provides that specific factors of employment caused or aggravated his condition.

By letter dated May 30, 2000, appellant requested a hearing.

Submitted with this request was a medical report by Dr. J. Christopher Connor, a podiatrist, dated February 16, 2000, wherein he stated his diagnosis of appellant's condition as "chronic [a]chille's tend[i]nitis with acute exacerbations of retrocalcaneal bursitis." He continued:

> "It is my opinion, within a reasonable degree of medical certainty, that [appellant's] foot condition is due to the demands of his employment as a postal worker. It is my understanding that his occupation requires standing and lifting heavy trays of mail as well as pushing heavy hampers of mail across parking lots, emptying hampers and loading vehicles. At this point in time [appellant] has a partial, permanent disability of his left lower extremity that will prohibit him from

continuing in this line of employment. I feel that he has reached maximum improvement from medical and therapy treatments that have been provided to date. I have treated [appellant] in the past for capsultis of his second metatarsolphalangeal joint of his right foot but to my knowledge he has never experienced any prior injuries or conditions relating to his left foot or ankle.

"It is further my opinion, within a reasonable degree of medical certainty, that [appellant's] prognosis is guarded and his condition will only be exacerbated by attempting to return to any type of employment that involves standing, lifting or pushing objects."

Pursuant to Dr. Connor's instructions, appellant received physical therapy.

At the hearing held on October 23, 2000, appellant testified that he began work as a letter carrier in 1986 and that when he began his employment he was on routes that required "all walking ... no vehicles at all" for nine years. He noted that in 1995 he started to deliver to a nicer neighborhood and had a vehicle, although the mail volume increased and the route still involved significant walking. Appellant testified that he started having trouble with his left ankle around August 31, 1998 and that he believed that the job was aggravating it. He noted that prior to the onset of this problem, he would work out regularly and that he also takes aikido, which involved a lot of stretching and did not involve any kicking. Appellant indicated that he stopped doing Iketo after his injury, but this was mainly because he did not have the money to continue. He further noted that he left the employing establishment about one week ago and has a new job.

At the hearing, appellant submitted a copy of an October 10, 1997 medical report by Dr. Connor, wherein he indicated that he evaluated appellant on that date for complaints of pain in his right foot, that there was no evidence of fracture, that he fit appellant with accommodative orthodics and anti-inflammatory medication was prescribed.

In a decision dated January 22, 2001, the hearing representative denied appellant's claim, finding that the record did not contain a well-rationalized opinion which established that the diagnosed conditions were related to the employment factors described by appellant.

By letter dated March 28, 2001, appellant requested reconsideration. In support of this request, he submitted progress reports by Dr. Connor dated from October 15, 1997 through November 16, 1999. Appellant also submitted an additional medical report by Dr. Connor, dated March 5, 2001, wherein he stated:

"I am writing at this time to hopefully clarify and explain why [appellant's] condition (chronic retrocalcaneal bursitis and tend[i]nitis of the Achille[']s tendon) prohibits him from continuing his occupation as a postal worker.

"The repetitive activity throughout a workday of lifting heavy trays, pushing heavy hampers, bending to empty hampers and loading vehicles causes a repetitive pressure against the retrocalcaneal bursa in the heel and irritation to the Achille[']s tendon. Doing this day after day creates a chronic condition that will not resolve without the elimination of this activity. The participation in [a]ikido and weightlifting is a very limited activity compared to day-to-day demands at

[appellant's] employment. In fact, the Iketo will help to stretch the [a]chille[']s tendon and the weightlifting will help to strengthen it which would outweigh any irritation that these activities would have."

By decision dated June 21, 2001, the Office denied appellant's request for reconsideration, as it found that the evidence submitted in support thereof was not sufficient to warrant modification of its prior decision.

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

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 limitation 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 an occupational disease claim such as this, claimant must submit: (1) medical evidence establishing the existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the disease; and (3) medical evidence establishing that the employment factors were the proximate cause of the disease or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[4] As part of this burden, appellant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.

In the instant case, the issue to be resolved was whether appellant's alleged injury to his left lower extremity was causally related to his federal employment. Dr. Connor stated "within a reasonable degree of medical certainty, that [appellant's] foot condition is due to the demands of his employment as a postal worker." He further explained that appellant's occupation required standing, lifting and pushing heavy hampers of mail." On reconsideration, Dr. Connor elaborated on this opinion, stating that the repetitive activity of "lifting heavy trays, pushing heavy hampers, bending to empty hampers and loading vehicles causes a repetitive pressure against the retrocalcaneal bursa in the heal and irritation to the Achille[']s tendon." He discounted appellant's participation in Iketo as the cause of the injury and in fact noted that aikido and weightlifting would tend to strengthen and stretch the Achille's tendon. Although

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Id.* at 352.

Dr. Connor's opinion generally supports appellant's contention that he was injured as a result of his federal employment, his opinion is speculative and insufficient on its own to support appellant's claim. It is unclear if Dr. Connor had an adequate understanding of what was involved in appellant's leisure activities of aikido and weightlifting and why he concluded that these activities were insufficient to cause appellant's injury. However, the fact that Dr. Connor's report contains deficiencies preventing appellant from discharging his burden of proof does not mean that it completely lacks probative value. Rather, the report is sufficient to require further development of the record especially given the absence of opposing medical evidence.[5] It is well established that proceedings under the Act are not adversarial in nature[6] and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in developing evidence.[7] In this case, there is an uncontroverted inference that appellant's condition in his left foot was caused by his repetitive lifting, pushing and bending associated with his federal employment.

On remand, the Office should refer appellant, together with a statement of accepted facts and the case record, to an appropriate Board-certified physician for an opinion regarding the relationship between appellant's foot condition and the repetitive duties required by his position with the employing establishment. After such development as is deemed necessary, the Office shall issue a *de novo* decision.

[5] *John Carlone*, 41 ECAB 354 (1989).

[6] *Shirley A. Temple*, 48 ECAB 404 (1997).

[7] *Id.*, *see Dorothy L. Sidwell*, 36 ECAB 699 (1985).

The decisions of the Office of Workers' Compensation Programs dated June 21 and January 22, 2001 are set aside and the case is remanded for further proceedings consistent with the opinion.

Dated, Washington, DC
August 28, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member