

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DOUGLAS McMILLON and U.S. POSTAL SERVICE,  
POST OFFICE, New York City, NY

*Docket No. 02-467; Submitted on the Record;  
Issued August 23, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
WILLIE T.C. THOMAS

The issue is whether appellant sustained an injury to his right foot causally related to factors of his federal employment.

On August 18, 2000 appellant, then a 49-year-old letter carrier filed a traumatic injury claim alleging that on that same day he twisted his right foot in a hole in the bathroom floor at work. Appellant stopped work on August 18, 2000 and returned on April 17, 2001.<sup>1</sup>

On December 8, 2000 the Office of Workers' Compensation Programs denied appellant's claim for failure to establish fact of injury. On January 1, 2001 appellant requested an oral hearing, which was held June 20, 2001.

By decision dated September 17, 2001, an Office hearing representative affirmed the prior decision finding that the medical evidence failed to establish a causal relationship between the condition and employment factors.

The Board finds that appellant has not established that he sustained a right foot condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim<sup>3</sup> including the fact that the individual is an "employee of the United States" within the meaning of the Act,<sup>4</sup> that the claim

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<sup>1</sup> On October 20, 2000 appellant filed a CA-7 claim for compensation for wage loss for the period October 5 through 20, 2000 related to the claimed August 18, 2000 employment injury. The record does not reflect whether the Office made a determination regarding appellant's claim for wage-loss compensation.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Daniel R. Hickman*, 34 ECAB 1220 (1983).

<sup>4</sup> *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

was timely filed within the applicable time limitation period of the Act,<sup>5</sup> 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.<sup>6</sup>

Establishing whether an injury, traumatic or occupational, was sustained in the performance of duty as alleged, *i.e.*, “fact of injury,” and establishing whether there is a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed, *i.e.*, “causal relationship,” are distinct elements of a compensation claim. While the issue of “causal relationship” cannot be established until “fact of injury” is established, acceptance of fact of injury is not contingent upon an employee proving a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed. An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.<sup>7</sup>

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an “injury.” The term “injury” as commonly used, refers to some physical or mental condition caused by trauma.<sup>8</sup> The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.<sup>9</sup>

In this case, appellant has established an employment incident in that he stepped into a drainage hole in a bathroom at work on August 18, 2000. Appellant, however, has failed to meet his burden of proof for the reason that he has not submitted medical evidence establishing that the August 18, 2000 incident resulted in a right foot condition.

Appellant submitted medical reports regarding this August 18, 2000 employment incident. None of these reports, however, indicate that this incident resulted in the claimed right foot condition. In a work excuse note dated August 21, 2000, Dr. Arthur Gudeon, a podiatrist indicated that appellant was being treated for a foot problem and was unable to perform his regular duties. Dr. Gudeon noted that he considered a possible diagnosis of bone fracture, bone cyst and intraosseous hematoma pending a magnetic resonance imaging (MRI) scan. The note did not include a history of injury, a diagnosis or address a causal relationship between a diagnosed condition and the August 18, 2000 employment incident.

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<sup>5</sup> 5 U.S.C. § 8122.

<sup>6</sup> See *Daniel R. Hickman*, *supra* note 3.

<sup>7</sup> As used in the Act, the term “disability” means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; see *Frazier V. Nichol*, 37 ECAB 528 (1986).

<sup>8</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> *John J. Carlone*, 41 ECAB 354 (1989).

An MRI report dated October 2, 2000 showed an expansible cystic lesion in the base of the proximal phalanx of the third toe, however, no definite fracture or significant abnormalities were noted. This evidence alone does not establish a causal relationship.

In an attending physician's report dated November 15, 2000, Dr. Gudeon reiterated his belief that appellant had a possible bone fracture, bone cyst and intraosseous hematoma pending an MRI scan, however, he made no reference to the October 2, 2000 MRI results. Dr. Gudeon related that on August 18, 2000 appellant stepped into an exposed drain hole in a bathroom at work and suffered severe pain in his right foot on the third digit. He checked yes on the form report that appellant's condition was caused by the August 18, 2000 employment injury. The Board has held, however, that when a physician's opinion on causal relation consists only of checking "yes" to a form question, that opinion has little probative value without further detail and explanation.<sup>10</sup> Thus, Dr. Gudeon's report is insufficient to support appellant's burden.

Dr. Gudeon submitted two subsequent statements dated December 18, 2000 and January 31, 2001. In the December 18, 2000 report, Dr. Gudeon diagnosed enchondromia/bone cyst of the right third toe and further stated that appellant had no history of pain or swelling in the above area prior to the August 18, 2000 accident, therefore "it is apparent that the accident caused the inception of symptoms that persist ... and require surgery to remove the cyst." Dr. Gudeon's January 31, 2001 report noted that appellant underwent surgery on December 28, 2000 and actually had the bone cyst prior to the August 18, 2000 incident. He stated however that the claimed work incident aggravated the condition, causing appellant pain and swelling that was not previously present prior to the accident. Although Dr. Gudeon's latest reports support a possible connection between appellant's foot condition and the August 18, 2000 incident, the reports are insufficient to meet appellant's burden. Dr. Gudeon speculated on the cause of appellant's condition but did not reach a specific conclusion regarding causation. As his opinion is equivocal and couched in speculative terms, it is of diminished probative value. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>11</sup>

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.<sup>12</sup> To establish causal relationship, appellant must submit a physician's report in which the physician reviews that factors of employment identified by appellant as causing his condition and taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.<sup>13</sup> Appellant failed to submit such evidence and, therefore, failed to discharge his burden of proof.

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<sup>10</sup> *Alberta S. Williamson*, 47 ECAB 569 (1996).

<sup>11</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>12</sup> *William S. Wright*, 45 ECAB 498 (1993).

<sup>13</sup> *Id.*

The decision of the Office of Workers' Compensation Programs dated September 17, 2001 is affirmed.

Dated, Washington, DC  
August 23, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member