

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK JONES and U.S. DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, ATLANTA FEDERAL PENITENTIARY, Atlanta, GA

*Docket No. 01-1295; Submitted on the Record;
Issued January 11, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained a foot injury while in the performance of his duties.

On October 12, 1999 appellant, then a 43-year-old correctional officer, filed an occupation disease claim asserting that his foot disease was aggravated greatly due to the nature of his job, which required continuous standing and walking on a concrete surface and climbing stairs for eight hours a day.

To support his claim appellant submitted disability certificates. The Office of Workers' Compensation Programs advised him on November 3, 1999 to provide a comprehensive medical report from his treating physician that offered an opinion, with medical reasons, on the cause of appellant's diagnosed condition. The Office added: "Specifically, if your doctor feels that exposure or incidents in your Federal employment contributed to your condition, an explanation of how such exposure contributed should be provided."

The Office received an attending physician's form report dated October 22, 1999 from Dr. Naim G. Shaheed, a podiatrist, who reported that on April 10, 1998 appellant walked down a flight of stairs and heard a snap in his right foot. Appellant had pain and swelling since that time and had difficulty putting weight on that foot. Findings included posterior tibial dysfunction with unilateral flatfoot and painful plantar fasciitis, right foot. The diagnosis was plantar fasciitis secondary to posterior tibial dysfunction. With an affirmative mark, Dr. Shaheed indicated that the condition found was caused or aggravated by employment activity. Dr. Shaheed noted: "Ambulating on area has progressed problem."

In a decision dated December 7, 1999, the Office denied appellant's claim. The Office found that the initial evidence of file supported that appellant actually experienced the claimed event. Appellant, however, failed to provide a narrative medical opinion, with reasons for such opinion, discussing the relationship between his job factors and the claimed condition or disability.

Appellant requested a hearing before an Office hearing representative, which was held on June 27, 2000. He submitted additional medical evidence to support his claim. On June 18, 1998 Dr. Shaheed reported appellant's history, complaints and findings on examination. Dr. Shaheed diagnosed peroneal tendon disruption base of the fifth metatarsal, prescribed treatment and reported physical restrictions.

On January 14, 2000 Dr. Jerome F. Poepelman, a podiatrist, noted that appellant denied any specific incident of trauma but stated that excessive walking, especially going up steps, seemed to aggravate his pain. Dr. Poepelman diagnosed mild Taylor's bunion of the right foot with an associated capsulitis/bursitis aggravated by his activity and footwear.

On December 8, 1999 Dr. Shaheed reported that appellant was prescribed and fitted for bilateral thermoplastic or acrylic functional foot orthoses. He noted: "The medical condition of this patient produces considerable symptomatology affecting extremity function and spinal alignment."

On December 21, 1999 Dr. Shaheed wrote to appellant as follows:

"You were initially seen in our office August 16, 1996, with pain to your left foot. Even though you state that this is an acute injury that occurred in 1992, our first exam[ination] was four years later. I do believe that you do have extenuating circumstances that have led to your posterior tibial dysfunction.

"Reading the letter from the U.S. Army, they state that they cannot correlate your injury. Unfortunately, posterior tibial dysfunction is a syndrome that does not have a dramatic effect such as a broken bone or a laceration. A posterior tibial dysfunction is a prolonged degenerative process that persists for some time. After a while, the tendon just simply gives way and causes a unilateral flatfoot deformity. In your case, your left foot.

"We could take x-ray exam[ination]s or an MRI [magnetic resonance imaging] analysis to show the posterior tibial tendon degeneration, but a more positive definitive correlative exam[ination], which the Army is asking for, simply does not exist for this type of problem.

"There are many articles recently written about posterior tibial dysfunction, which the Army could relate their examination to, but I feel that you have a true problem that is mediated by an un-giving surface, such as concrete or any un-giving surface to your pes planus deformity."

In his July 19, 2000 report, Dr. Shaheed advised appellant:

"I wish to be of service to you, but all I can render is my medical opinion. I do not have the particulars of your job description, but my opinion is that you suffered from a condition known as posterior tibial dysfunction. That means the tendon on the inside of the lower leg which is responsible for lifting and inverting the foot is damaged. This leads to a progressive weakness and flattening of the foot. Progressive standing, walking and climbing on concrete, or nongiving surfaces can greatly worsen the condition."

In a decision dated November 29, 2000, the Office hearing representative affirmed the December 7, 1999 denial of appellant's claim. The hearing representative found that, while Dr. Shaheed had provided an excellent explanation as to how the condition from which appellant was suffering had developed and progressed, his report was of diminished probative value because the physician never made an inference of causal relationship between appellant's federal employment duties and the progression of the diagnosed condition.

The Board finds that this case is not in posture for a determination of whether appellant sustained a foot injury while in the performance of his duties. Further development of the medical opinion evidence is warranted.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.²

In its December 7, 1999 decision, the Office found that the initial evidence of file supported that appellant actually experienced the claimed event. The Office, therefore, does not appear to dispute that appellant is required to stand and walk on concrete surfaces and climb stairs during his regular work hours. The question for determination is whether this employment activity caused an injury.

Causal relationship is a medical issue,³ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁴ must be one of reasonable medical certainty,⁵ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁶

As the hearing representative found in his November 29, 2000 decision, Dr. Shaheed has provided an excellent explanation as to how the condition from which appellant is suffering developed and progressed. The hearing representative found, however, that the physician never made an inference of causal relationship between appellant's federal employment and the progression of his foot condition. The Board notes that Dr. Shaheed expressly supported causal

¹ 5 U.S.C. §§ 8101-8193.

² See generally *John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); see also 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15)-5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ See *William E. Enright*, 31 ECAB 426, 430 (1980).

relationship in his attending physician's form report of October 22, 1999. He diagnosed plantar fasciitis secondary to posterior tibial dysfunction and indicated that this condition was caused or aggravated by employment activity: "Ambulating on area has progressed problem." Dr. Shaheed more fully explained the development and progression of appellant's condition in his December 21, 1999 and July 19, 2000 reports.

Dr. Shaheed's reports are of diminished probative value because appellant has been diagnosed with various conditions: plantar fasciitis secondary to posterior tibial dysfunction; peroneal tendon disruption base of the fifth metatarsal; and mild Taylor's bunion of the right foot with an associated capsulitis/bursitis. The diagnosed condition for which appellant seeks compensation is not especially clear from the record. Also, in his December 21, 1999 report, Dr. Shaheed noted that appellant's deformity was in his left foot, while other reports indicate the right. This must be clarified. Nonetheless, as the employment activity is established, as Dr. Shaheed has related appellant's foot condition to his federal employment and has provided an explanation of the nature of the condition and how it develops, and as there is no medical opinion evidence to the contrary, the Board finds that the evidence submitted by appellant is sufficiently supportive of his claim that further development is warranted.⁷ The Office shall prepare a statement of accepted facts and request a supplemental report from Dr. Shaheed clarifying the nature of appellant's diagnosed condition and its relationship to his accepted employment duties. After such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim for compensation.

The November 29, 2000 decision of the Office of Workers' Compensation Programs hearing representative is set aside, and the case is remanded for further development in accordance with this decision.

Dated, Washington, DC
January 11, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁷ See *John J. Carlone, supra* note 2 at 358 (finding that the medical evidence was not sufficient to discharge appellant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship raised).