

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT L. McDONALD, JR. and DEPARTMENT OF THE ARMY,
KENTUCKY NATIONAL GUARD, Frankfort, KY

*Docket No. 03-906; Submitted on the Record;
Issued May 28, 2003*

DECISION and ORDER

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

The issue is whether appellant met his burden of proof in establishing that he sustained a left foot condition in the performance of duty on July 16, 2002.

On July 17, 2002 appellant, then a 54-year-old supply technician, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that on July 16, 2002 he injured his left foot "during PT [physical therapy]" and also while coming down a ladder. Appellant's employing establishment controverted appellant's claim for continuation of pay stating that the injury was "not caused by work." In support of his claim, appellant submitted an emergency room report dated July 17, 2002, diagnosing plantar fasciitis and indicating that he had a history of heel spurs and wearing heel inserts. A July 17, 2002 radiology report revealed calcification of the plantar tendon and an August 2, 2002 magnetic resonance imaging (MRI) report of the left ankle and hind foot showed some abnormalities.

From his treating podiatrist, Dr. Daniel E. Whitney, appellant submitted a July 25, 2002 report and a note referring him to physical therapy in September 2002. Dr. Whitney stated: "Patient states he stepped off a ladder and felt a real sharp pain in heel and arch on Tuesday, July 16, 2002. Patient tried soaking in Epsom salt with minimal relief." He diagnosed appellant with possible avulsion fracture left cuboid, possible peroneal rupture and heel spur/plantar fasciitis. Appellant also submitted handwritten progress notes from Dr. Whitney and physical therapy reports.

By letter dated October 22, 2002, the Office of Workers' Compensation Programs informed appellant that the evidence received in support of his claim was insufficient to establish that he actually experienced the incident and was injured in the performance of duty. Appellant was asked to clarify whether his injury occurred during physical therapy or while he was coming down a ladder. The Office also informed appellant that the medical evidence was insufficient to establish that his left foot injury occurred while performing his job duties as a supply technician. The Office requested that appellant submit a medical report from his attending physician indicating how his left foot injury was related to the incident on July 16, 2002.

By letter dated November 17, 2002, appellant stated that the injury occurred while he was stepping down from a ladder and felt like he had stepped on a nail. He stated that something “just snapped” in his foot and that he had never had an injury to his left foot prior to this incident. Appellant indicated that Dr. Whitney placed his foot in several types of casts and that he used crutches and also underwent physical therapy.

By decision dated December 10, 2002, the Office denied appellant’s claim for compensation on the grounds that the evidence was not sufficient to establish fact of injury. The Office noted that the evidence of file supported that appellant actually experienced the claimed event on July 16, 2002 but the medical evidence did not establish that his left foot condition was due to the incident on July 16, 2002.

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a left foot condition in the performance of duty.

An employee seeking benefits under the Federal Employees’ Compensation Act 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 filed within the applicable time limitation 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.”¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

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. In this case, the Office accepted that the first component, the employment incident, occurred as alleged.³

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.⁴

In this case, the medical evidence submitted by appellant is insufficient to establish that his left foot condition was the result of the incident on July 16, 2002. The record does not contain a physician’s rationalized medical opinion relating appellant’s foot condition to employment factors. Appellant submitted various medical reports diagnosing plantar fasciitis of

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Elaine Pendleton*, *supra* note 1.

⁴ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

the left foot and diagnostic reports confirming the condition, yet he did not submit a physician's opinion on the issue of causal relationship. It is appellant's burden to submit a physician's rationalized medical opinion report, based on a complete factual and medical background, establishing a connection between his diagnosed foot condition and the incident at work on July 16, 2002.

The Office informed appellant of the deficiency in the medical evidence on October 22, 2002 and requested that he submit a medical report from his attending physician indicating how his left foot injury was related to the work incident on July 16, 2002. Appellant submitted various medical reports containing diagnoses but with no opinion on causal relationship. Only Dr. Whitney in his July 25, 2002 report mentioned the July 16, 2002 incident at work, yet he did not provide a rationalized medical opinion on the cause of appellant's condition. Dr. Whitney indicated that appellant had a sharp pain in his left heel and arch on July 16, 2002 while he was stepping down from a ladder, however, he did not opine that appellant's condition was due to this incident. The Office provided appellant 30 additional days to submit a physician's rationalized medical report to support his claim, however, the Office received no such evidence. There is no other medical evidence of record which mentions the incident at work on July 16, 2002 and addresses the issue of causal relationship. The Board also notes that the evidence of record indicates that appellant has a history of heel spurs predating the work incident on July 16, 2002. As appellant did not submit a rationalized medical opinion report establishing a causal relationship between his left foot condition and the incident at work on July 16, 2002, he did not meet his burden of proof in this case.

The December 10, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 28, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member