

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TED R. COURTER and U.S. POSTAL SERVICE,
POST OFFICE, Grand Rapids, MI

*Docket No. 03-1978; Submitted on the Record;
Issued November 7, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant established that he sustained a right ankle or foot condition due to factors of his federal employment.

On March 2, 2001 appellant, then a 47-year-old letter carrier, filed a notice of occupational disease alleging that he sustained a right ankle condition which he attributed to walking on rough surfaces in cold weather while in the performance of duty. He noted that he first hurt his right ankle when he slipped and fell on January 5, 1999.¹ Appellant stated that he worked limited duty and then returned to his regular work, after which time he continued to have problems with right ankle pain.

In a September 19, 2000 report, Dr. Edwin Kornoelje, an osteopath, stated that appellant sustained a right ankle injury on January 5, 1999 when he slipped on ice and heard something snap in his foot on the way down. He noted that appellant was initially seen on January 5, 1999 and diagnosed with a right ankle strain and returned to limited duty where his condition improved to the extent that he could return to full duty effective January 15, 1999. Dr. Kornoelje related that over the next several months, appellant continued to be bothered by pain in the top of his foot, most noticeably when he was using the brake pedal. He stated, "it is quite possible that [appellant's] ankle is still bothered from the injury that was incurred and, due to the fact that he is up on it during a good portion of the day, this can aggravate this problem."

¹ The record contains a CA-1 claim form pertaining to a traumatic injury on January 5, 1999 under a separate claim number, A9448298.

In a decision dated May 1, 2001, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that the medical evidence of record was insufficient to establish fact of injury.²

In a letter dated March 29, 2002, appellant requested reconsideration and submitted a report from Dr. James DeWitt, a podiatrist, dated May 8, 2001. Dr. DeWitt related that appellant hurt his right ankle and leg when he fell on ice while delivering mail on January 5, 1999; that his initial x-ray showed no fractures to the ankle and that appellant returned to limited duty following the injury. He described that appellant experienced right foot and ankle pain after walking approximately two hours and, whenever he performed a stepping motion, such as when he used the brake pedal or dismounted his postal vehicle. After returning to regular duty, appellant saw Dr. DeWitt on April 10, 2001, at which time the physician prescribed a cortisone injection and physical therapy. Dr. DeWitt scheduled appellant to undergo a magnetic resonance imaging (MRI) scan to rule out an occult talar fracture or other occult injuries to the right foot. In treatment notes dated June 19 and July 10, 2001, Dr. DeWitt stated that the MRI scan showed some peroneal tendinitis, which could be explained by the severe inversion plantar flexion force supplied to the foot at the time of appellant's January 5, 1999 work injury. He noted range of motion findings and prescribed physical therapy.

In a decision dated May 30, 2002, the Office found that Dr. DeWitt's opinion was insufficient to warrant modification of the May 1, 2001 decision. The Office noted that Dr. DeWitt was uncertain as to the cause of appellant's pain, although he attributed appellant's tendinitis to his January 5, 1999 work injury and not to work factors. The Office recommended that appellant submit his medical documentation under his traumatic injury claim and request that it be reopened.

Appellant requested reconsideration on February 25, 2003 and submitted an additional report from Dr. DeWitt dated June 19, 2002, which discussed appellant's history of injury on January 5, 1999 and his conservative treatment. Dr. DeWitt indicated that appellant had continued pain while performing his letter carrier duties on foot and when he dismounted from a motor route. He stated with reasonable medical certainty that appellant's right ankle pain was directly caused by the January 5, 1999 work injury. Dr. DeWitt opined that appellant's current pain and discomfort were aggravated by his letter carrier duties since appellant described having complete pain relief when not performing his job. In a decision dated May 15, 2003, the Office denied modification of its prior decision.³

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

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the

² The Office specifically noted that: (1) Dr. Kornoelie failed to provide a definitive diagnosis as to the cause of appellant's right ankle pain; and (2) that he failed to attribute appellant's alleged right ankle condition to work factors in his federal employment.

³ The Office once again noted that Dr. DeWitt did not provide a definitive diagnosis of appellant's right ankle condition.

presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴

In this case, the Office found the medical evidence insufficient to carry appellant's burden of proof to establish that his right ankle or foot injury was causally related to work factors. The Office held that the evidence suggested that appellant's continued right ankle and foot pain was due to the original traumatic injury of January 5, 1999 and not his work duties after that date. The Board finds that the Office erred by not combining the traumatic injury claim of January 5, 1999 and appellant's occupational disease claim for proper consideration as the nature and extent of appellant's alleged injury.⁵ The Board finds that the opinion of Dr. DeWitt is sufficient to warrant further medical development of appellant's occupational disease claim. Dr. DeWitt indicated that appellant has evidence of tendinitis of the right ankle confirmed by his MRI scan. Although Dr. DeWitt did not provide a thoroughly rationalized opinion as to causation, he indicated that appellant's work duties after January 5, 1999 aggravated his original injury. Proceedings under the Federal Employees' Compensation Act are not adversarial in nature nor is the Office a disinterested arbiter. The Office shares the responsibility in the development of the evidence to see that justice is done.⁶ On remand, the Office should develop the medical evidence as appropriate to determine whether appellant has a right foot or ankle condition causally related to work factors. After such further medical development as the Office deems necessary, the Office shall issue a *de novo* decision.

⁴ *Samuel Polen*, 51 ECAB 341 (2000).

⁵ FECA Bulletin No. 97-10 (issued February 15, 1997) provides that cases should be combined when a new injury is reported for an employee who has filed a previous injury claim for the same part of the body.

⁶ *See Jimmy A. Hammons*, 51 ECAB 219 (1999).

The decision of the Office of Workers' Compensation Programs dated May 15, 2003 is hereby vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
November 7, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member