United States Department of Labor
Employees' Compensation Appeals Board

SIDNEY C. SUAREZ, Appellant	)	
and	)	**Docket No. 04-1705**
	)	**Issued: December 29, 2004**
U.S. POSTAL SERVICE, BICENNTENNIAL STATION, Los Angeles, CA, Employer	)	

Appearances:
Sidney C. Suarez, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On June 25, 2004 appellant timely filed an appeal from an April 1, 2004 decision by the Office of Workers' Compensation Programs, which found that he did not have a permanent impairment for which he could receive a schedule award. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant sustained an employment-related permanent impairment entitling him to a schedule award.

FACTUAL HISTORY

On August 13, 2003 appellant, then a 37-year-old letter carrier, filed a claim for an occupational injury to his legs caused by standing and by walking on different types of surfaces for most of the day. He indicated that he came to realize that his job aggravated his injury due to repetitive movement every day he worked.

Appellant submitted an August 5, 2003 report from Dr. Steven Glass, a Board-certified family practitioner, who stated that appellant complained of bilateral foot problems, Achilles' tendinitis and bone spurs, which had been present for years but were currently more painful. He indicated that appellant had a one centimeter nodular growth on the calcaneus more on the right than the left. Dr. Glass noted that appellant's right foot was more tender. He reported that appellant had a normal range of motion in the ankle and toes and a normal gait. Dr. Glass diagnosed bilateral Achilles tendinitis and bilateral metatarsalagia.

In an October 9, 2003 letter, the Office accepted appellant's claim for bilateral Achilles' tendinitis. The Office informed him that if he was currently disabled or on light duty because of the accepted injury, he should have his physician provide the period for which he was totally disabled, the date he could or did begin light-duty work, work restrictions and treatment recommendations.

In a November 6, 2003 report, Dr. Lauri B. Hemsley, Board-certified in occupational medicine, stated that appellant had mild tenderness over the bottom of the right foot which had been present for years but was progressively getting worse. She noted that he had tried orthotics, multiple steroid injections and, in the prior year, a sesamoidectomy of the right foot. Dr. Hemsley noted that appellant filed for compensation because he was having difficulty at work in a full-duty status. She indicated that appellant was on light duty. Dr. Hemsley commented that appellant reported that he walked four to six hours a day on his mail route. She stated that he had mild tenderness over the bottom of his right foot with suture lines over the metatarsal area which was tender to palpation. Dr. Hemsley diagnosed status post sesamoidectomy secondary to chronic sesamoiditis. She explained that appellant had evidence of bilateral sesamoid bones which were extra bones in his feet. Dr. Hemsley indicated that the presence of the bones was not industrially related. She commented that the symptoms were only unilateral, not bilateral. Dr. Hemsley indicated that she could not state that appellant's work caused his condition. She stated that appellant required further treatment but on a nonindustrial basis. Dr. Hemsley concluded that appellant would have experienced the same condition without his current employment.

Appellant submitted numerous reports concerning his right sesamoidectomy and a painful scar on the right foot after surgery. In a July 25, 2001 report, Dr. Christian Neagu, a podiatrist, noted that appellant had a stabbing pain at the level of the forefoot for three to four months. He reported that the onset of the pain would occur two to three hours after the start of weight-bearing or standing. Dr. Neagu indicated that the symptoms tended to be aggravated with activity, relieved by rest. He commented that appellant also complained of ankle pain which he related to an ankle strain sustained 10 years previously. Appellant reported that he had the ankle pain two to three times a week. Dr. Neagu reported that x-rays of the foot and ankle showed bipartite tibial and fibular sesamoids bilaterally and intertendinous calcinosis of the Achilles tendon with a prominent superior posterior aspect of the calcaneus. He indicated that appellant had a full range of motion of the right ankle and no tenderness in the Achilles tendon area. Subsequent reports described his right foot condition before and after the sesamoidectomy. None of the reports discussed appellant's right ankle condition or Achilles' tendinitis.

In a December 29, 2003 report, Dr. Hemsley stated, in a final comprehensive report, that appellant had a gradual onset of pain on the bottom of his right forefoot that progressively worsened over several years. He had no history of an acute injury. Dr. Hemsley indicated that appellant was first seen on July 25, 2001 and received treatment for right fibular sesamoiditis. He underwent a fibular sesamoidectomy in April 2002. Dr. Hemsley indicated that appellant had occasional pain at rest but, with activities, including walking, he had constant pain at a high level. She noted that appellant could only walk approximately 30 minutes at a time and then must sit. Dr. Hemsley indicated that the pain would resolve with rest and elevating the foot. She reported that appellant denied numbness and tingling in the right foot. Dr. Hemsley stated that appellant had no measurable atrophy, evidence of pes planus and mild tenderness over the bottom of the foot. She indicated that appellant had a full range of motion in the right ankle. Dr. Hemsley noted that appellant was able to bear weight on his right foot and was able to walk, heel walk and squat without difficulty. She commented that appellant had normal dorsalis pedal pulse, left to right and normal foot sensation. Dr. Hemsley diagnosed status post right foot sesamoidectomy secondary to chronic sesamoiditis. She deferred discussion on the cause of appellant's right foot condition. Dr. Hemsley commented that appellant had lost 50 percent of his preinjury capacity for standing and walking which limited him to semi-sedentary work. She stated that appellant was unable to return to work as a mail carrier.

On March 1, 2004 appellant filed a claim for a schedule award. The Office referred the case record to Dr. Leonard Simpson, an Office consultant, for a review of whether he had a permanent impairment of the right foot. In a March 14, 2004 memorandum, he noted that appellant's claim was accepted for bilateral Achilles' tendinitis. Dr. Simpson commented that appellant underwent a sesamoidectomy in April 2002. He stated that the underlying condition for which appellant underwent surgery was nonindustrial and not caused or affected by his employment. Dr. Simpson pointed out that the Office had not authorized the procedure. He reviewed Dr. Hemsley's December 9, 2003 report and the other medical evidence of record. Dr. Simpson stated that a review of the record did not indicate any documentation of ongoing subjective symptomatology due to the employment-related Achilles' tendinitis. He commented that the medical records did not show any limitation of motion, atrophy or weakness. Dr. Simpson concluded that appellant had a zero percent permanent impairment of each leg and each foot due to the accepted bilateral Achilles' tendinitis. He indicated that the date of maximum improvement was December 9, 2003, when appellant was found to have no positive findings in regard to the Achilles' tendinitis.

In an April 1, 2004 decision, the Office denied appellant's claim for a schedule award because he had no permanent impairment related to his accepted condition of Achilles' tendinitis.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence, including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.[1] Before appellant can receive a schedule award, he must first establish that the permanent

[1] *Annette M. Dent*, 44 ECAB 403, 407 (1993).

impairment for which he seeks a schedule award is causally related to an employment injury. Section 8107 of the Act provides that if there is permanent disability involving the loss or loss of use, of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[2] Neither the Act nor the regulation specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as a standard for evaluating schedule losses and the Board has concurred in such adoption.[3]

ANALYSIS

Appellant submitted a claim for a schedule award for the right foot or leg. The Office only accepted his claim for bilateral Achilles' tendinitis. The bulk of the medical evidence submitted by him related to fibular sesamoiditis for which he underwent a sesamoidectomy. In her November 6, 2003 report, Dr. Hemsley indicated that the sesamoidectomy was due to chronic semoiditis which arose from extra bones in appellant's right foot. She commented that appellant would have experienced the same condition without his employment as a letter carrier. Dr. Hemsley stated that she could not give an opinion on whether his emoiditis was causally related to his employment. No other medical report of record addressed the issue of causal relationship. There was no medical evidence that appellant's accepted condition of Achilles' tendinitis was causally related to his chronic sesamoiditis. Dr. Hemsley indicated that she was unable to give an opinion on causal relationship, but suggested that appellant would have experienced the same condition if he had not been a letter carrier. The evidence of record does not contain any medical report that specifically relates his Achilles' tendinitis to his sesamoiditis or that relates the sesamoiditis to his employment. Dr. Hemsley indicated that appellant's sesamoiditis was due to extra bones in the right foot which preexisted his employment. He has not submitted any medical evidence which would establish that he had a permanent impairment to his right leg or foot due to his employment.

CONCLUSION

Appellant failed to establish that he had any permanent impairment to the lower extremities causally related to his accepted condition of bilateral Achilles' tendinitis.

[2] 5 U.S.C. § 8107.

[3] *James Kennedy, Jr.,* 40 ECAB 620, 626 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 1, 2004 is hereby affirmed.

Issued: December 29, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member