

**United States Department of Labor
Employees' Compensation Appeals Board**

JUAN MARQUEZ, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
El Paso, TX, Employer**

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**Docket No. 04-1747
Issued: December 29, 2004**

Appearances:
Juan Marquez, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On July 1, 2004 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated April 5, 2004, finding that he failed to establish an injury while in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury while in the performance of duty.

FACTUAL HISTORY

On January 22, 2004 appellant, then a 43-year-old letter carrier, filed an occupational disease claim alleging that his plantar fasciitis was caused by factors of his employment. He had been a carrier for 17 years and walked between 7 and 8 hours daily. Appellant noted that, over the years, his heels suffered excessive abuse resulting in his condition. In support of his claim,

appellant submitted a November 6, 2003 prescription from a physician whose signature is illegible for a specific shoe to provide arch support for his foot. He also submitted a disability certificate dated December 9, 2003 from a physician whose signature is illegible, which indicated that he received medical treatment from December 2 through 9, 2003 and was totally disabled during this period. The disability certificate also indicated that appellant could return to regular-duty work on December 10, 2003 with the aid of certain boots to accommodate his plantar fasciitis.

The employing establishment controverted appellant's claim due to insufficient medical evidence. The employing establishment noted that he had been a letter carrier since April 23, 1988 and the work duties associated with his assignment to a park and loop route.

By letter February 4, 2004, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office requested that he submit detailed information about the employment-related activities he believed caused his condition, the length of time he spent performing these activities, his activities outside his federal employment, the development of his condition and his previous orthopedic injuries and medical treatment. Further, the Office requested that appellant submit a comprehensive medical report from his treating physician describing his symptoms, results of examinations and tests, diagnosis, treatment, the effect of treatment and a rationalized medical opinion as to whether his condition was employment related.

On February 11, 2004 the employing establishment reiterated appellant's employment history and disagreed with his allegations. The employing establishment stated that, on an average delivery day, about four out of six days a week, a carrier on a park and loop route walked about five to six hours daily. The employing establishment also noted that a carrier walked less than five hours if assigned to a dismount or curbside route. The employing establishment further noted the specific activities of a carrier performing a park and loop route and stated that break and lunch requirements were established so that no carrier walked continuously for seven to eight hours daily.

In a letter dated February 22, 2004, appellant advised the Office that he had received conflicting instructions about the type of information he should submit in support of his claim. He stated that he twice submitted his occupational disease claim form to the employing establishment's compensation office. Appellant stated that the first time he submitted his claim form he was told that it was not properly completed. He resubmitted the claim form and was informed to submit information from his treating physician. Appellant requested that the Office clarify the type of information he should submit.

By decision dated February 4, 2004, the Office found the evidence of record sufficient to establish that the claimed exposure, but insufficient to establish that appellant sustained an injury causally related to the work-related exposure.¹

¹ On appeal appellant has submitted new evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952); 20 C.F.R. § 501.2(c). Appellant may submit the new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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 timely filed within the applicable time limitation period 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.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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 presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying 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. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

ANALYSIS

Appellant submitted a November 6, 2003 prescription with an illegible signature for a special shoe to support his arch. This prescription is insufficient to establish appellant's burden of proof because it is not clear that it is from a physician.⁶ Therefore, the Board finds that as the report lacks proper identification, it does not constitute medical evidence sufficient to establish appellant's burden of proof.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁶ *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988)(Reports not signed by a physician lack probative value).

Similarly, the December 9, 2003 disability certificate contains an illegible signature, and states that appellant was found totally disabled from December 2 through 9, 2003 and that he could return to work on December 10, 2003 with the aid of special boots to accommodate his plantar fasciitis. It is not clear, however, that it is from a physician.⁷ As the disability certificate also lacks proper identification, it does not constitute competent medical evidence and is insufficient to establish appellant's burden of proof.

As appellant has failed to submit any rationalized medical evidence establishing that he sustained an injury causally related to factors of his employment in his position as a letter carrier, he did not meet his burden of proof in this case.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the April 5, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 29, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁷ See cases cited *supra* note 6.