

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

MALCOLM J. PROFIT, SR., Appellant)	
)	
and)	Docket No. 04-1972
)	Issued: December 23, 2004
U.S. POSTAL SERVICE, POST OFFICE, New Orleans, LA, Employer)	
)	

Appearances:
Malcolm J. Profit, Sr., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On August 4, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 18, 2003 denying that he sustained a left foot injury in the performance of duty. He also appealed a June 10, 2004 decision finding that he abandoned a hearing before an Office hearing representative. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a left foot condition in the performance of duty; and (2) whether the Office properly determined that appellant abandoned his request for a hearing before an Office hearing representative.

FACTUAL HISTORY

On June 24, 2003 appellant, then a 45-year-old mail carrier, filed an occupational disease claim alleging that he sustained plantar fasciitis and strained ligaments in his left foot due to his

work duties. He asserted that he developed this condition because he was required to walk and stand up from 8 to 10 hours per day for 6 days per week.¹

In support of his claim, appellant submitted several reports of Dr. Denise L. Elliott, an attending doctor of podiatric medicine. On September 25, 2002 she stated that appellant presented for the first time on that date complaining of left heel pain for the previous four or five months. Dr. Elliott stated that he denied direct injury to his left foot, but advised her that his job required walking for more than eight hours per day. She noted that appellant had some inflammation of the left heel and diagnosed plantar fasciitis and heel spur syndrome of the left foot. She recommended conservative treatment to include the use of medication and orthopedic support devices and indicated that appellant could continue his work activity without restriction.

In reports dated March 10 and 26, 2003, Dr. Elliott continued to report appellant's left foot symptoms, including heel pain and diagnosed plantar fasciitis of the left foot. In a report dated April 4, 2003, she stated that appellant's mail carrier position required long periods of standing and walking and recommended that he work in a limited-duty position which required standing and walking for no more than two hours per day. On April 21, 2003 Dr. Elliott indicated that she would make one final attempt to conservatively treat appellant's left plantar fasciitis. During this period, it appears that he worked in both full-duty and limited-duty positions for the employing establishment. On May 19, 2003 Dr. Elliott stated that appellant's plantar fasciitis had not responded to conservative treatment and recommended surgery.

By decision dated August 18, 2003, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a left foot injury in the performance of duty.²

On September 2, 2003 appellant requested a hearing before an Office hearing representative. By notice dated April 21, 2004, the Office advised him of the specific time and place of the hearing to be held on May 26, 2004. The record shows that appellant did not show up for the hearing.

By decision dated June 10, 2004, the Office determined that appellant abandoned his request for a hearing before an Office hearing representative.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act³ 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

¹ Appellant indicated that for periods in 2002 he worked in limited-duty positions, which only required him to walk for two or three hours per day.

² The Office determined that appellant had established the factual aspect of his claim, *i.e.*, his job required him to walk for extended periods. By letter dated July 16, 2003, the Office advised appellant that he did not submit sufficient medical evidence to establish his claim.

³ 5 U.S.C. § 8101 *et seq.*

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.⁴ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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.⁶

ANALYSIS -- ISSUE 1

In the present case, appellant claimed that he sustained a left foot condition due to the extended walking and standing required by his job. While he established that he engaged in such duties, appellant did not submit sufficient medical evidence to show that he sustained a left foot injury due to employment factors. Appellant submitted several reports of Dr. Elliott, an attending doctor of podiatric medicine, which described the treatment of his left foot problems. These reports, however, are of limited probative value on the relevant issue of the present case in that they do not contain an opinion on causal relationship.⁷

In several reports dated between September 2002 and May 2003, Dr. Elliott indicated that appellant had plantar fasciitis of the left foot. She also reported that he detailed the duties of his mail carrier job. For example, in a September 25, 2002 report, Dr. Elliott stated that appellant denied direct injury to his left foot but advised her that his job required walking for more than eight hours per day. In an April 4, 2003 report, Dr. Elliott made note of his standing and

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁶ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁷ *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

walking duties and recommended that he work in a limited-duty position which required standing and walking for no more than two hours per day. However, none of these reports contained a clear opinion that appellant's job duties actually caused or contributed to the diagnosed condition, left plantar fasciitis. The fact that Dr. Elliott mentioned appellant's walking and standing duties is not a substitute for a well-rationalized medical opinion linking these duties to his claimed left foot condition. Appellant was provided with adequate opportunity to submit such medical evidence but he failed to do so.

LEGAL PRECEDENT -- ISSUE 2

The authority governing abandonment of hearings rests with the Office's procedure manual. Chapter 2.1601.6(e) of the procedure manual, dated January 1999, provides as follows:

"e. Abandonment of Hearing Requests.

"(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.

"Under these circumstances, [Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the [district Office]. In cases involving precoupment hearings, [Branch of Hearings and Review] will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the [district Office].

"(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, [Branch of Hearings and Review] should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.

"This course of action is correct even if [Branch of Hearings and Review] can advise the claimant far enough in advance of the hearing that the request is not approved and that the claimant is, therefore, expected to attend the hearing and the claimant does not attend."⁸

ANALYSIS -- ISSUE 1

In the present case, the Office scheduled an oral hearing before an Office hearing representative at a specific time and place on May 26, 2004. The record shows that the Office

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999).

mailed appropriate notice to the claimant at his last known address.⁹ The record also supports that appellant did not request postponement, that he failed to appear at the scheduled hearing and that he failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As this meets the conditions for abandonment specified in the Office's procedure manual, the Office properly found that appellant abandoned his request for an oral hearing before an Office hearing representative.¹⁰

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a left foot condition in the performance of duty. The Board also finds that the Office properly determined that he abandoned his request for a hearing before an Office hearing representative.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 10, 2004 and August 18, 2003 are affirmed.

Issued: December 23, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ The notice of the hearing was mailed to the following address of record: 406 20th Street, No. 8, Gretna, LA. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. *See George F. Gidicsin*, 36 ECAB 175, 178 (1984). The notice was mailed to appellant's proper address in the ordinary course of business and there is no contrary evidence showing that he did not receive it.

¹⁰ *See also Claudia J. Whitten*, 52 ECAB 483, 485 (2001).