United States Department of Labor
Employees' Compensation Appeals Board

CEDRIC D. YARBROUGH, Appellant	)	
and	)	**Docket No. 05-1934**
	)	**Issued: December 5, 2005**
DEPARTMENT OF THE INTERIOR, SHERMAN INDIAN HIGH SCHOOL, Riverside, CA, Employer	)	

Appearances:
Cedric C. Yarbrough, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On September 19, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 8, 2005 denial of his claim. Under 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 to his right foot while in the performance of duty on February 25, 2005.

FACTUAL HISTORY

Appellant, a 35-year-old school janitor, filed a claim for benefits on February 28, 2005, alleging that he injured his right foot and heel on February 25, 2005 when he slipped and fell while emptying a trash can.

On August 4, 2005 the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from his treating physician describing her symptoms and the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days.

Appellant submitted a treatment note/form report dated August 17, 2005. In the section of the report subtitled "Diagnosis," there is a handwritten notation which appeared to indicate that appellant injured the fifth metacarpal (MC) joint of his right foot. In addition, the report was initialed by a physician whose initials were not legible.

By decision dated September 8, 2005, the Office denied appellant's claim, finding that he failed to submit sufficient medical evidence in support of his claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that 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.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[5] The medical evidence required to establish causal relationship is usually rationalized medical 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,

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *John J. Carlone*, 41 ECAB 354 (1989).

[5] *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

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]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[7]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[8] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

In this case, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established by medical evidence.[9] Appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on February 25, 2005 caused a personal injury and resultant disability.

The only medical document appellant submitted was the August 17, 2005 treatment note, which apparently indicated that appellant injured the fifth MC joint of his right foot, but did not relate this diagnosis to the February 25, 2005 work incident. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[10] Although the August 17, 2005 report did present a diagnosis of appellant's condition, it did not indicate whether this condition was causally related to the February 25, 2005 work incident and did not contain a legible signature from a physician. There is no indication in the record, therefore, that this injury was work related. Appellant therefore failed to provide a rationalized, probative medical opinion relating his current condition to any factors of his employment.

The Office advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant, therefore, did not provide a medical opinion to sufficiently describe or explain the medical process through which the February 25, 2005 work accident would have caused the claimed injury. Accordingly, as appellant has failed to submit any probative medical evidence establishing that he sustained an injury to his right

[6] *Id.*

[7] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[8] *Id.*

[9] *John J. Carlone*, *supra* note 4.

[10] *See Anna C. Leanza*, 48 ECAB 115 (1996).

fracture left great toe injury in the performance of duty, the Office properly denied appellant's claim for compensation.[11]

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury to his right foot in the performance of duty on February 25, 2005.

ORDER

IT IS HEREBY ORDERED THAT the September 8, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: December 5, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

[11] On appeal, appellant has submitted new evidence. However, the Board cannot consider new 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 (1952); 20 C.F.R. § 501(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 501(c).