

FACTUAL HISTORY

On June 2, 2004 appellant, then a 48-year-old supervisory librarian, filed a traumatic injury claim alleging that she injured her right foot while walking down stairs to the auditorium at work on May 4, 2004. She did not stop work.¹

Appellant submitted a May 4, 2004 report in which Dr. David L. Smith, an attending physician specializing in rheumatology, stated that she reported experiencing pain in her right foot while walking on stairs to the auditorium on that date. Dr. Smith indicated that appellant exhibited mild point tenderness of her right foot and diagnosed “possible stress fracture or extensor tendinitis.” In a report dated May 7, 2004, Dr. Smith noted that a fracture of appellant’s right foot could not be ruled out and recommended that she undergo bone scan testing.

By letter dated September 8, 1994, the Office requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted the findings of May 7, 2004 x-ray testing, which showed an irregular lucency in the navicular bone of her foot with soft tissue swelling in the same area. The findings of October 18, 2004 bone scan testing revealed focal increased uptake in the right hindfoot and lateral malleolus, which was most consistent with degenerative or post-traumatic changes. In a report dated October 6, 2004, Dr. D. Marsh, an attending physician, stated that appellant reported experiencing pain in her right foot while walking down steps on May 4, 2004. Dr. Marsh indicated that appellant reported persistent pain in her right mid foot and diagnosed “persistent arthralgia.”

By decision dated November 10, 2004, the Office denied appellant’s claim that she sustained a right foot injury in the performance of duty on May 4, 2004. The Office accepted the occurrence of the May 4, 2004 employment incident, but found that she did not submit sufficient medical evidence to establish that she sustained an injury due to the incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of 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

¹ Appellant received continuation of pay for the period May 5 to June 18, 2004. She sought reimbursement for medical expenses and authorization for diagnostic testing related to her claimed injury.

² 5 U.S.C. § 8101-8193.

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

⁴ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the “fact of injury” has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶ The term “injury” as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.⁷

ANALYSIS

Appellant established that an employment incident occurred on May 4, 2004 when she experienced right foot pain while walking down stairs at work, but she did not submit sufficient medical evidence to establish that she sustained a right foot injury due to this employment incident.

Appellant submitted a May 4, 2004 report in which Dr. Smith, an attending physician specializing in rheumatology, stated that she reported experiencing pain in her right foot while walking on stairs to the auditorium on that date. Dr. Smith indicated that appellant had right foot pain and diagnosed “possible stress fracture or extensor tendinitis.” However, this report is of limited probative value in that it does not provide a clear diagnosis of appellant’s right foot condition or otherwise indicate that she had a condition which was related to the May 4, 2004 employment incident.⁸

Appellant also submitted the findings of October 18, 2004 bone scan testing that revealed focal increased uptake in the right hindfoot and lateral malleolus, which was most consistent with degenerative or post-traumatic changes. However, this report also did not provide a diagnosis or clearly indicate whether the findings were related to a degenerative process or a specific traumatic incident. It provided no indication that appellant sustained a traumatic injury on May 4, 2004. In a report dated October 6, 2004, Dr. Marsh, an attending physician, reported the history of the May 4, 2004 employment incident, noted that appellant was symptomatic and

⁵ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁶ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁷ *Elaine Pendleton*, *supra* note 4; 20 C.F.R. § 10.5(a)(14).

⁸ 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).

diagnosed “persistent arthralgia.” But Dr. Marsh did not provide an opinion indicating that appellant’s condition was due to the May 4, 2004 employment incident.⁹

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a right foot injury in the performance of duty on May 4, 2004.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers’ Compensation Programs’ November 10, 2004 decision is affirmed.

Issued: June 14, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁹ Given that appellant has not shown that she sustained a right foot injury due to the May 4, 2004 employment incident, she has not shown that she is entitled to reimbursement of medical expenses incurred for treatment of an employment-related condition. *See Bertha L. Arnold*, 38 ECAB 282, 284 (1986).