

and did not return. On the reverse side of the claim form, appellant's supervisor noted that the injury was initially reported on January 26, 2004 as not related to employment and then on March 15, 2004 "reported as [a] recurrence of [an] injury from 'years ago.'"

In a duty status report dated March 8, 2004, Dr. John R. Cicero, a podiatrist, listed findings of pain and swelling of the right ankle. Regarding the history of injury, he stated that appellant had not sustained an injury but had "progressive pain and swelling due to osteochondritis...."

In a statement dated April 1, 2004, appellant related:

"In 1988 an ankle sprain occurred while walking a route. Since then reoccurring (sic) problems have continued...."

"Due to the nature of my job, the constant pounding of the pavement[,] this injury came to a head on January 23, 2004 which is stated on my paperwork."

"Surgery was performed on March 18, 2004. [M]y return to work at this point is uncertain."

By letter dated April 23, 2004, an official with the employing establishment related that appellant was off work on leave beginning January 27, 2004. She stated:

"When his leave was about to be exhausted (March 29, 2004), [appellant] filed a CA-2a and alleged that his disability was due to an old injury. He stated that since the original injury he has experience[d] swelling and water in his ankle. The recurrence was to have taken place on January 23, 2004 when his ankle became inflamed while at work, there was no mention of twisting his ankle on this date. He was to be totally disabled until after surgery. Since [appellant] was unable to provide the claim number or date of [the] original injury, and this office was unable to identify a prior right ankle injury, it was suggested that he file a new claim."

"[Appellant] refiled the CA-2a with the date of 1988 and at the same time submitted the attached CA-2 dated April 1, 2000. [He] is now alleging that he twisted his ankle on January 23, 2004."

By letter dated May 3, 2004, the Office requested that Dr. Cicero provide a reasoned opinion regarding whether appellant sustained an employment-related medical condition. In a separate letter of the same date, the Office requested additional factual information from appellant regarding his claim. The Office informed appellant that it was adjudicating his claim as a traumatic injury since he stated on his claim form that he twisted his ankle on January 23, 2004.

Appellant, in a response dated May 18, 2004, described his injury as occurring when, while walking his route, he “went up a flight of stairs to deliver mail and twisted my ankle on the way down.” He related:

“I immediately felt pain in my ankle and could hardly walk. I sat on the steps for a couple of minutes and then began to walk again. By the end of my route my ankle was swollen. The following morning I told my supervisor about my ankle and left for the [doctor].”

Appellant maintained that he had no “prior disability due to this ankle.”

In a report received June 7, 2004, Dr. Cicero stated that he initially treated appellant on January 26, 2004 for complaints of right foot and ankle pain.¹ He related:

“He reported that[,] on January 24, 2004, he had injured his right ankle while on [the] stairs at work. [Appellant] has had pain in this area with periods of exacerbation and remission, dating back to June of 1991, at which time he had sprained this ankle also while at work. Since that time, [appellant] has had symptoms consistent with [p]osterior [t]ibial tend[i]nitis/[t]alo-[n]avicular capsulitis/arthritis and [s]inus [t]arsi [s]yndrome.”

Dr. Cicero noted that a February 19, 2004 magnetic resonance imaging (MRI) scan study showed “a 13 mm [millimeter] defect in the medial talar dome” and indicated that he performed a subchondral drilling and excision of defective cartilage on March 18, 2004. He opined that it was unknown whether appellant could resume his usual employment after his recovery from surgery.

In a Form CA-16 dated May 18, 2004, a physician listed the history of injury as pain in the right foot and ankle while walking and diagnosed tendinitis.² He checked “yes” that the condition was caused or aggravated by the employment incident.

Dr. Cicero, in a report dated July 19, 2004, reiterated the findings from his June 7, 2004 report and requested that the Office telephone him for clarification of appellant’s opinion.

By decision dated July 21, 2004, the Office denied appellant’s claim on the grounds that he failed to establish the occurrence of the January 23, 2004 employment incident due to factual inconsistencies. The Office further found that he did not establish a medical condition causally related to the alleged January 23, 2004 employment incident.

¹ In a disability certificate dated April 29, 2004, Dr. Cicero found that appellant was unable to work from March 18 to June 10, 2004 following foot surgery.

² The name of the physician is not legible.

LEGAL PRECEDENT

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 was filed within the applicable time limitation; that an injury was sustained while 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 and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁶ In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.⁷ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁸ A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁹ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he has established a *prima facie* case.¹⁰ An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹¹ An employee's statement, however, alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹²

³ 5 U.S.C. §§ 8101-8193.

⁴ *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 4.

⁶ *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Edward W. Malanick*, 51 ECAB 280 (2000).

⁹ See *Caroline Thomas*, *supra* note 4.

¹⁰ *Id.*

¹¹ *Louise F. Garnett*, 47 ECAB 639 (1996).

¹² See *Caroline Thomas*, *supra* note 4.

Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.¹³ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.¹⁴

In order to satisfy his burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the employment incident caused the alleged injury.¹⁵ 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 employee's alleged injury and the employment incident.¹⁶ The physician's opinion must be based on a complete factual and medical history of the employee, must be of reasonable certainty and must rationally explain the relationship between the diagnosed injury and the employment incident as alleged by the employee.¹⁷

ANALYSIS

In this case, appellant initially filed an occupational disease claim; however, the Office properly adjudicated his claim as a traumatic injury as he described an injury as occurring on January 23, 2004.¹⁸

The Board finds that the evidence contains inconsistencies sufficient to cast serious doubt as to whether the January 23, 2004 incident occurred at the time, place and in the manner alleged. Appellant indicated on the claim form that he injured himself on January 23, 2004 when he "retwisted" his ankle and that he showed his ankle to his supervisor and sought medical treatment the following day. His supervisor, however, noted on the claim form that appellant reported that his injury was nonoccupational in nature until March 15, 2004. The supervisor related that on March 15, 2004 appellant described the injury as a recurrence of an older injury. In a statement dated April 23, 2004, an official with the employing establishment stated that on March 29, 2004 appellant filed a claim for a recurrence of disability on January 23, 2004 and described the circumstances as his ankle becoming "inflamed while at work." In a statement dated April 1, 2004, appellant related that he had recurrent problems with his ankle after a 1988 ankle sprain and that the injury occurred on January 23, 2004 "[d]ue to the nature of my job" and

¹³ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹⁴ *Gary J. Watling*, *supra* note 13.

¹⁵ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

¹⁶ *Gary J. Watling*, *supra* note 13.

¹⁷ See *John W. Montoya*, 54 ECAB ____ (Docket No. 02-2249, issued January 3, 2003); *Shirley R. Haywood*, 48 ECAB 404 (1997).

¹⁸ The regulations define an occupational disease or illness as "a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q). A "traumatic injury" is defined as "a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift." 20 C.F.R. § 10.5(ee).

“the constant pounding of the pavement.” In a statement dated May 18, 2004, appellant related that he twisted his ankle on the way down a flight of stairs while delivering mail and noted that he did not have any prior disability due to this ankle. In a report dated June 7, 2004, Dr. Cicero indicated that he treated appellant on January 26, 2004 for right foot and ankle pain and that appellant related that on January 24, 2004 he injured his ankle on the stairs while working. In the most contemporaneous medical report of record, however, dated March 8, 2004, Dr. Cicero found that appellant had not sustained an injury to his right ankle but instead had “progressive pain and swelling due to osteochondritis.” The medical evidence of record thus fails to provide a consistent date of injury. Additionally, appellant has not adequately explained the reason for his delay in filing his claim and for failing to tell the employing establishment that his right ankle condition was related to his employment for over two months. Appellant, therefore, has failed to meet his burden of proof to establish that the employment incident occurred as alleged and, consequently, has failed to establish that he sustained an injury in the performance of duty.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury on January 23, 2004 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated July 21, 2004 is affirmed.

Issued: May 16, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member