



appellant's first visit, Dr. Agee listed a history that she twisted her ankle three weeks prior and that she had a mass on her left foot that was not painful but had been sore when it first appeared a few weeks ago. He diagnosed ganglion cyst of the left foot, painful left foot and difficulty walking. In July 27, 2004 reports, Dr. Agee noted that the mass on appellant's left foot was getting bigger and set forth a limitation of no standing for longer than 20 minutes per hour. In an August 4, 2004 report, he stated that appellant's ganglion cyst was still painful, tender and swollen. He prescribed physical therapy and continued limited activities. In a September 1, 2004 report, Dr. Agee stated that appellant's ganglion cyst of the left foot was still painful.

By decision dated October 20, 2004, the Office found that none of the medical evidence established that appellant's work as a letter carrier caused the ganglion cyst of her left foot.

On November 5, 2004 appellant requested reconsideration. She stated that, on or about the third week of June 2004, she twisted her left ankle stepping off a porch while delivering mail. She reported this injury to her supervisor but did not write it up because they thought it would be all right. She continued to walk on her left foot and her condition became worse and a large bump appeared on the side of her left foot. By July 8, 2004, the pain became so severe that she went to Dr. Agee. Appellant submitted a November 3, 2004 statement from her supervisor attesting that appellant notified her on or about June 17, 2004, that she twisted her ankle while stepping off a porch. Appellant chose not to file an accident report at that time but the pain did not go away after a few weeks so she went to a foot doctor on July 8, 2004. In an October 28, 2004 report, Dr. Agee stated that appellant's left foot pain was worse with activity and better with rest, that she had a history of an employment injury in June 2004, and that her symptoms were consistent with "an ankle foot sprain inversion injury." He stated that her swelling had reduced in size resulting in a bony exostosis over the calcaneal-cuneiform joint, which could be the result of a healing fracture.

By decision dated January 3, 2005, the Office found that the evidence did not establish that appellant actually experienced the accident or event and that the medical evidence did not cite a work injury or exposure that led to appellant's twisted ankle or ganglion cyst.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim<sup>2</sup> including the fact that the individual is an "employee of the United States" within the meaning of the Act,<sup>3</sup> that the claim was timely filed within the applicable time limitation period of the Act,<sup>4</sup> that an injury was sustained in

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> See *Daniel R. Hickman*, 34 ECAB 1220 (1983); 20 C.F.R. § 10.110.

<sup>3</sup> *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

<sup>4</sup> 5 U.S.C. § 8122.

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.<sup>5</sup>

Establishing whether an injury, traumatic or occupational, was sustained in the performance of duty as alleged, *i.e.*, “fact of injury,” and establishing whether there is a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed, *i.e.*, “causal relationship,” are distinct elements of a compensation claim. While the issue of “causal relationship” cannot be established until “fact of injury” is established, acceptance of fact of injury is not contingent upon an employee proving a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed. An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.<sup>6</sup>

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an “injury.” The term “injury” as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to or contact with, certain factors, elements or conditions.<sup>7</sup> The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.<sup>8</sup>

### ANALYSIS

Appellant’s claim for compensation, filed on August 28, 2004, attributed an aggravation of her left foot and ankle condition, including her ganglion cyst, to walking, standing and climbing hills on July 8, 2004. There is no dispute that she performed such activities on that date.

The medical evidence, however, does not support that these activities on July 8, 2004 caused or aggravated her left foot or ankle condition. Dr. Agee, a treating podiatrist, noted in his July 8, 2004 report that a mass on appellant’s left foot appeared. He set forth a history that she twisted her ankle three weeks prior. Appellant, however, has not filed a claim for compensation for twisting her ankle in June 2004 and Dr. Agee did not attribute her ankle or foot condition to this event. In an October 28, 2004 report, Dr. Agee stated that appellant’s symptoms were consistent with a sprain inversion injury, but this is not the July 8, 2004 injury claimed by appellant and adjudicated by the Office. Appellant has not submitted any medical evidence

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<sup>5</sup> See *Daniel R. Hickman*, *supra* note 2.

<sup>6</sup> As used in the Act, the term “disability” means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. See *Frazier V. Nichol*, 37 ECAB 528 (1986).

<sup>7</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989).

indicating that her employment activities of walking, standing and climbing hills on July 8, 2004 caused or contributed to her left foot and ankle condition.

**CONCLUSION**

The Board finds that appellant has not established that her employment activities on July 8, 2004 aggravated her left foot and ankle condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 3, 2005 and October 20, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 7, 2005  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board