

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

_____)	
E.R., Appellant)	
)	
and)	Docket No. 06-1073
)	Issued: August 7, 2006
DEPARTMENT OF THE INTERIOR,)	
SAN ANTONIO MISSIONS, San Antonio, TX,)	
Employer)	
_____)	

Appearances: *Case Submitted on the Record*
E.R., pro se
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On April 7, 2006 appellant filed a timely appeal from a January 27, 2006 merit decision of the Office of Workers' Compensation Programs finding that he did not sustain an injury while in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issue is whether appellant has established that he sustained an injury while in the performance of duty.

FACTUAL HISTORY

On October 6, 2005 appellant, then a 50-year-old motor vehicle operator, filed an occupational disease claim alleging that on September 21, 1995 he first realized that the pain in his left heel and left leg which radiated to the toes on his right foot was caused by factors of his federal employment. He stated that the pain was due to wearing resoled boots for two years and three months to save money for the employing establishment.

Appellant submitted an October 18, 2005 progress note from Dr. Baxter,¹ who diagnosed left plantar fasciitis. An October 4, 2005 x-ray report, electronically signed by Dr. John F. Black, a Board-certified radiologist, found that he had a normal left heel with degenerative change consistent with age.

By letter dated November 8, 2005, the Office requested that the employing establishment submit information regarding appellant's claim. In a letter of the same date, the Office advised him that the evidence submitted was insufficient to establish his claim. The Office further advised appellant about the factual and medical evidence he needed to submit to establish his claim.

In an undated statement received by the Office on December 1, 2005, appellant contended that, in June 2003, his request for new boots was denied and that his old boots were resoled to save money. He described his work duties, the development of his foot condition beginning on September 21, 2005 and his medical treatment which commenced on October 4, 2005. Appellant submitted an October 4, 2005 progress note which contained an illegible signature. It diagnosed plantar fasciitis and degenerative joint disease. A partial copy of an attending physician's report dated October 4, 2005 from Dr. Efrem L. Castillo, a Board-certified family practitioner, and Dr. Baxter's October 18, 2005 duty status report also diagnosed plantar fasciitis. Employment records included, among other things, a description of appellant's original motor vehicle operator position and a revised version of this position.

In an October 11, 2005 statement, David J. Vekasy, a facility manager, contended that appellant's June 2003 request for new boots was not denied. It was actually approved and he was given the option to resole existing boots which had been purchased with the employing establishment's funds in 2002. Mr. Vekasy stated that appellant received a brand new pair of boots and the resoled pair for \$188.00 in June 2003. He indicated that employees were not prohibited from using their own funds to purchase footwear worn on the job as long as they met established uniformity guidelines. Mr. Vekasy noted the employing establishment's safety boot policy. He was not aware of any problems with appellant's feet or boots between June 2003 and September 2005. Mr. Vekasy stated that his September 2005 request for new safety boots was approved with the disposal of the pair that was purchased in 2002 and resoled in 2003, based on the employing establishment's written policy. He indicated that appellant remained in possession of the pair purchased in 2003 and the new pair purchased in 2005. Mr. Vekasy explained that the option of resoling boots was made available to all employees as a reasonable adjustment to the written boot policy in response to staff requests to be allowed to maintain two serviceable pairs of safety boots. He concluded that he had no reason to dispute the information provided by appellant regarding his pain and medical treatment. Mr. Vekasy submitted a July 14, 1998 memorandum regarding the employing establishment's policy for safety boots.

In an undated statement received by the Office on December 2, 2005, appellant indicated that he had no choice but to agree to wear a pair of resoled boots, otherwise he could not receive a new pair according to Mr. Vekasy. He described additional work duties that he performed 8 to 10 hours on each occasion over a 15-year period. Appellant stated that he did no more than

¹ The Board notes that the professional qualifications of Dr. Baxter cannot be determined from the case record.

normal walking to and from his home, to his vehicle, to work, to the store and while shopping. He reiterated the development of his foot condition and noted his symptoms and medical treatment.

By decision dated January 26, 2006, the Office found that appellant did not sustain an injury while in the performance of duty. The Office explained that, although the evidence of record supported that the “claimed event(s) occurred as alleged,” the medical evidence failed to establish a causal relationship between the alleged condition and his employment duties.

LEGAL PRECEDENT

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

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.⁵

² 5 U.S.C. §§ 8101-8193.

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

⁴ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

ANALYSIS

The Board finds that appellant has failed to establish a causal relationship between his foot conditions and his federal employment.

Appellant submitted Dr. Baxter's progress note and form report both dated October 18, 2005 and Dr. Castillo's October 4, 2005 form report which diagnosed plantar fasciitis. This evidence fails to address a causal relationship between the claimed injury and his employment. The Board finds that Dr. Baxter's progress notes and report and Dr. Castillo's report are insufficient to establish appellant's burden of proof.

An October 4, 2005 progress note from a physician whose signature is illegible found that appellant sustained plantar fasciitis and degenerative joint disease. This progress note is of no probative value because it is not signed by a physician.⁶ As the progress note lacks proper identification, the Board finds that it does not constitute probative medical evidence sufficient to establish appellant's burden of proof.⁷

Dr. Black's October 4, 2005 x-ray report found that appellant had a normal left heel and a degenerative change which he attributed to the aging process and not to factors of his federal employment. Thus, the Board finds that Dr. Black's report is insufficient to establish his burden of proof.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained plantar fasciitis and a degenerative change of the left heel causally related to factors of his federal employment as a motor vehicle operator. He did not meet his burden of proof.

CONCLUSION

As appellant did not provide the necessary medical evidence to establish that he sustained an injury while in the performance of duty, the Board finds that he has failed to satisfy his burden of proof in this case.

⁶ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁷ *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988). (Reports not signed by a physician lack probative value).

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board