



employment related. She stated that on August 26, 2004 she first noticed a sharp pain in her right heel. Appellant noted that the pain was dull at first but became more severe by the end of the workday and was now a daily occurrence. She attributed this condition to her work duties of walking, standing and stepping in and out of the LLV for eight hours a day.

In a letter dated November 9, 2004, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition and an opinion as to whether her claimed condition was causally related to her federal employment. The Office requested that appellant submit the additional evidence within 30 days. Appellant did not submit any additional evidence.

By decision dated February 11, 2005, the Office denied appellant's claim for failure to establish that she sustained an injury. The Office stated that, although appellant's statement supported that the claimed events occurred, she failed to submit medical evidence.

In a request signed and dated February 15, 2005, with an attached envelope postmarked May 3, 2005, appellant requested an oral hearing.

By decision dated May 27, 2005, the Office denied appellant's request for an oral hearing. The Office stated that appellant's request was postmarked May 3, 2005, which was more than 30 days after the issuance of the Office's February 11, 2005 decision and that she was therefore not entitled to a hearing as a matter of right. The Office nonetheless considered the matter in relation to the issue involved and denied appellant's request on the grounds that it could be addressed through the reconsideration process by submitting additional evidence.<sup>1</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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 filed within 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.<sup>3</sup> These are the essential elements of each and every

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<sup>1</sup> The Board notes that, following the February 11, 2005 merit decision and May 27, 2005 nonmerit decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. *See* 20 C.F.R. § 501.2(c); *Rosemary A. Kayes*, 54 ECAB 373 (2003). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Phillip L. Barnes*, 55 ECAB \_\_\_\_ (Docket No. 02-1441, issued March 31, 2004); *Elaine Pendleton*, 40 ECAB 1143 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.<sup>4</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been 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 or exposure, which is alleged to have occurred.<sup>5</sup> In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>6</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>7</sup> The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that appellant's work duties included standing all day and helping out with routes during the summer occurred as alleged. However, the record is devoid of any medical evidence relating a condition to her employment duties. The record contains no medical evidence. The Office advised appellant in a November 9, 2004 letter regarding the deficiencies in her claim as well as advising her as to the type of medical evidence required to support her claim. As appellant has not submitted any medical evidence to establish that she has a left heel condition, she has failed to meet her burden of proof to establish an injury.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b)(1) of the Act provides that a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.<sup>9</sup>

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<sup>4</sup> See *Ellen L. Noble*, 55 ECAB \_\_\_\_ (Docket No. 03-1157, issued May 7, 2004); *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995); see also *Ellen L. Noble*, *supra* note 4.

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

<sup>7</sup> *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>8</sup> *Charles E. Evans*, 48 ECAB 692 (1997).

<sup>9</sup> 5 U.S.C. § 8124(b)(1).

Sections 10.617 and 10.618 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.<sup>10</sup> Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, the Office may within its discretionary powers grant or deny appellant's request and must exercise its discretion.<sup>11</sup> The Office's procedures concerning untimely requests for hearings and review of the written record are found in the Federal (FECA) Procedure Manual, which provides:

“If the claimant is not entitled to a hearing or review (*i.e.*, the request was untimely, the claim was previously reconsidered, etc.), H&R [Hearings and Review] will determine whether a discretionary hearing or review should be granted and, if not, will so advise the claimant, explaining the reasons.”<sup>12</sup>

### ANALYSIS -- ISSUE 2

In this case, the 30-day period for determining the timeliness of appellant's hearing request would commence on February 12, 2005 the date following the issuance of the Office's February 11, 2005 decision denying her claim for compensation. Thirty days from February 12, 2005 would be March 14, 2005. Appellant's hearing request would be timely if filed by March 14, 2005.

The envelope in which appellant's request was sent, reveals a postmark date of May 3, 2005. Because her request for a hearing was postmarked more than 30 days after the Office issued the February 11, 2005 decision, the Board finds that it was not timely filed and she is not entitled to a hearing as a matter of right. Further, the Office considered appellant's request and correctly advised her that she could equally well address the issue in her case through the reconsideration process. Under these circumstances, the Board finds that the Office properly denied a discretionary hearing on the matter.<sup>13</sup>

### CONCLUSION

The Board finds that the Office properly found that appellant failed to meet her burden of proof to establish that she sustained a right foot injury in the performance of duty. The Board finds that the Office properly denied appellant's request for an oral hearing before an Office hearing representative.

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<sup>10</sup> 20 C.F.R. §§ 10.616, 10.617.

<sup>11</sup> *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4 (b)(3) (October 1992).

<sup>13</sup> The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. *E.g.*, *André Thyratron*, 54 ECAB 257 (2002); *Jeff Micono*, 39 ECAB 617 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 27 and February 11, 2005 are affirmed.

Issued: March 9, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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