

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

_____)
R.L., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
IMMIGRATION & CUSTOMS)
ENFORCEMENT, Brownsville, TX, Employer)

_____)

Docket No. 07-369
Issued: April 17, 2007

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 24, 2006 appellant timely appealed the November 14, 2006 merit decision of the Office of Workers' Compensation Programs, which denied his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty.

FACTUAL HISTORY

On March 6, 2006 appellant, a 56-year-old criminal investigator, filed a claim for an injury to his right heel.¹ He stated that his injury occurred while he was on temporary

¹ Although the claim is dated March 6, 2006, the employing establishment did not receive it until August 15, 2006.

assignment in Buenos Aries, Argentina. Appellant explained that the pain in his right Achilles' heel developed over a period of days.

In response to the Office's request for additional information, appellant submitted an October 5, 2006 statement describing the onset of his claimed condition. He explained that he was on temporary assignment in Argentina from December 2, 2005 until May 26, 2006 and it was during this time frame that his right heel condition developed. While in Argentina, appellant worked at the U.S. Embassy. He also worked at a seaport where he provided support for the Container Security Initiative. Appellant stated that he did not recall any single incident that may have caused his right heel condition. He reiterated that the pain in his right heel developed over a period of days.

While in Argentina, appellant sought treatment from an embassy physician, Dr. Michael A. Heald, who prescribed anti-inflammatory medication. The medication provided some temporary relief, but the pain ultimately returned. Appellant also saw a local Argentine physician, who similarly prescribed anti-inflammatory medication. Additionally, appellant stated that he was an avid runner for 19 years, running between 10 to 12 miles per week. However, he suspended his running regimen due to his right heel condition. Appellant reportedly never suffered an injury as a result of his running regimen.

Appellant's right heel condition persisted following his return to the United States in May 2006, and soon after he arrived home he sought treatment from his family physician, Dr. Victor M. Gonzalez. He indicated that a recent x-ray Dr. Gonzalez obtained showed no fracture. Dr. Gonzalez referred appellant to a podiatrist, who in turn referred him for physical therapy. Appellant also stated that he had not previously been treated for any lower extremity condition.

In an October 6, 2006 letter, Dr. Heald stated that he saw appellant in March 2006 for "left" heel pain, which was probably soft tissue in origin. He prescribed Motrin, ice and stretching exercises. Dr. Heald also indicated that no x-rays or other laboratory tests were performed. Appellant departed the post and no further follow up was obtained.

Appellant also submitted treatment records from Dr. Gonzalez' office dated June 8 and August 1, 2006, along with an undated x-ray that showed a normal right heel. He was diagnosed with right heel tendinitis. The June 8, 2006 treatment note indicated that appellant complained of pain in the posterior portion of the right ankle, which had been present for two to three months. Appellant reportedly denied any trauma to the right heel. When he returned on August 1, 2006 with ongoing complaints of pain, he was referred to a podiatrist, Dr. Jose Luis Ayala.

Dr. Ayala saw appellant on August 3, 2006 and diagnosed calcaneal bursitis and tendinitis. The history obtained noted that appellant had experienced severe pain in his right heel since February and that prior attempts to treat the condition with oral anti-inflammatory medication had been unsuccessful. Appellant later underwent physical therapy for

approximately two months, with little success.² When Dr. Ayala saw appellant for a follow-up examination on September 26, 2006, he placed him in a cast below the right knee.

In an October 18, 2006 decision, the Office denied the claim based on appellant's failure to establish that he sustained an injury in the performance of duty. Although the Office received appellant's October 5, 2006 statement and the accompanying medical evidence on October 17, 2006, this information was not associated with the case record prior to the issuance of the October 18, 2006 decision.

Appellant requested reconsideration on October 23, 2006. The Office reviewed the merits of the claim, but denied modification by decision dated November 14, 2006. The Office found that appellant did not provide a factual statement describing the employment activity or activities which caused or resulted in his claimed right heel pain. The Office also found that the record did not include an employment-related diagnosis.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁴

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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 diagnosed condition is causally related to the employment factors identified by the claimant.⁵

² The initial August 7, 2006 physical therapy evaluation report noted that appellant had been experiencing pain since last March when he was on assignment. The report further indicated that appellant "does not know the etiology of his pain" and he denied any previous ankle or foot injuries. Also noted was the fact that appellant had been a consistent runner prior to the onset of his pain.

³ 5 U.S.C. § 8101 *et seq.* (2000).

⁴ 20 C.F.R. § 10.115(e), (f) (2006); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

⁵ *Victor J. Woodhams*, *supra* note 4.

ANALYSIS

Appellant has a diagnosis of right heel tendinitis. However, none of the physicians who treated him attributed this condition to his employment. Moreover, appellant did not provide a description of his particular job duties and physical requirements that arguably could have contributed to his claimed condition. The only information provided was that he was assigned to the U.S. Embassy in Buenos Aires and he occasionally worked at a local seaport. Where appellant was physically located is largely irrelevant. His specific duties and what he actually did at the time of his injury is more pertinent to the current inquiry. Appellant did not recall any single incident that may have caused his right heel condition. All he noted was that it developed over a period of days while on assignment in Argentina. The mere fact that a condition manifests itself during a period of employment is not sufficient to establish causal relationship.⁶

While appellant presented evidence of a diagnosed medical condition, his claim is properly denied because he did not identify employment factors alleged to have caused or contributed to his condition. Moreover, the medical evidence does not establish that the diagnosed condition is employment related.

CONCLUSION

Appellant failed to establish that he sustained an injury in the performance of duty.

⁶ 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

ORDER

IT IS HEREBY ORDERED THAT the November 14, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board