

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

T.T., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Houston, TX, Employer**

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**Docket No. 07-532
Issued: June 6, 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 30, 2006 appellant filed an appeal of a February 7, 2006 decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that he sustained a right foot injury in the performance of duty.

FACTUAL HISTORY

On May 5, 2005 appellant, then a 58-year-old program support clerk, filed a traumatic injury claim (Form CA-1) asserting that on April 19, 2005 he injured his right foot when it

became caught in a revolving door at work. He submitted a May 12, 2005 letter from Dr. Mark H. Moss, an attending podiatrist, diagnosing a Morton's neuroma of the right foot.¹

In an October 13, 2005 letter, the Office advised appellant of the additional medical and factual evidence needed to establish his claim. The Office emphasized the need to submit a report from his physician explaining how and why the April 19, 2005 incident would cause a right foot injury. Appellant was afforded 30 days in which to submit such evidence.

In an October 25, 2005 letter, Claudeth Jordan, one of appellant's coworkers, stated that on April 19, 2005 she saw appellant stop abruptly while exiting a revolving door and heard him say that his right foot was twisted. "[H]e also had a slight limp after coming through the door."

In a November 1, 2005 report, Dr. David Spinks, an attending Board-certified internist, noted that appellant injured his right foot at work on April 19, 2005. He diagnosed plantar fasciitis and a neuroma of the right foot.

By decision dated November 16, 2005, the Office denied the claim on the grounds that fact of injury was not established. The Office found that appellant submitted insufficient evidence that the April 19, 2005 incident occurred as alleged.

In a December 16, 2005 letter, appellant requested a review of the written record by a representative of the Office's Branch of Hearings and Review. He asserted that the employing establishment and the Office had not dealt fairly with him. Appellant submitted a January 9, 2006 letter reiterating these contentions.

By decision dated and finalized February 7, 2006, the Office hearing representative modified the November 16, 2005 decision to accept that the April 19, 2005 incident occurred at the time, place and in the manner alleged. The hearing representative further found that appellant submitted insufficient rationalized medical evidence to establish that the April 19, 2005 incident caused the diagnosed Morton's neuroma.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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.³ These are the essential

¹ Appellant submitted April 20 and 27, 2005 medical forms with illegible signatures. It is well established that medical evidence lacking proper identification is of no probative medical value. *Merton J. Sills*, 39 ECAB 572 (1988).

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

ANALYSIS

The Office accepted that on April 19, 2005 appellant caught his right foot in a revolving door at work. The Office denied appellant’s claim on the grounds that the medical evidence submitted did not establish that the April 19, 2005 incident caused a right foot injury.

Dr. Moss, an attending podiatrist, diagnosed a Morton’s neuroma of the right foot. Dr. Spinks, an attending Board-certified internist, noted that appellant sustained an occupational right foot injury on April 19, 2005 and diagnosed plantar fasciitis and a neuroma of the right foot. Neither physician explained how and why the accepted April 19, 2005 incident would cause a Morton’s neuroma, plantar fasciitis or any other medical condition. Without such rationale, the opinions of Dr. Moss and Dr. Spinks are of insufficient probative value to establish causal relationship in this case.⁷ Thus, appellant has not submitted medical evidence establishing that the accepted April 19, 2005 incident caused any injury or condition. Therefore, he has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained a right foot injury in the performance of duty as alleged.

⁴ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 7, 2006 is affirmed.

Issued: June 6, 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