



On October 25, 2006 appellant filed a claim alleging that he sustained a recurrence of disability on October 19, 2006 causally related to his August 9, 2006 injury. He explained that a fracture found in his foot on October 24, 2006 was a direct result of the August 9, 2006 accident at work. Appellant noted that an x-ray taken after his injury showed no fracture, but he was nonetheless in constant discomfort; he performed his regular duties even though he was in pain. On October 19, 2006, however, his physician noticed that his toes were swollen. He took appellant off work for three days and made referral to a podiatrist. When new x-rays showed a fracture, his podiatrist restricted him from delivering mail. Appellant stated that the employing establishment allowed him to work two hours a day until he returned to full duty on November 10, 2006. He added that he had no other injuries since August 9, 2006.

An x-ray ordered on August 9, 2006 was reported to show no fracture in the right foot. Appellant sought further medical attention on September 21, 2006: “[He] presents with foot pain for the last few days, every day at work, hurts with walking no history of trauma, he changed shoes today but no effect, not taking any pain meds right now.” Clinical findings included foot pain on the right foot at the top, no bony tenderness. Appellant was given a diagnosis of overuse injury and prescribed pain medication. He was told to change shoes and follow up with a podiatrist in one week if he was not better.

On October 19, 2006 appellant sought further medical attention. He complained that his ankle was stiff every morning and seemed to be getting worse. Clinical findings showed no edema or erythema. There was discomfort with flexion and extension but no tenderness to palpation. Appellant was given a diagnosis of arthralgia of ankle or foot. He followed up with Dr. John Salamone, a podiatrist, on October 24, 2006. Although an osteopath reported that x-rays obtained on October 24, 2006 showed no fracture, Dr. Salamone reviewed these x-rays and found, in contrast to prior films, “a healing, nearly healed, fracture at the base of 2<sup>nd</sup> metatarsal, extrarticular.” He diagnosed a fractured right foot and returned appellant to modified duty, with no delivery of mail, from October 25 to November 11, 2006.

On November 22, 2006 Dr. Salamone described appellant’s medical history since August 9, 2006. He noted that x-rays taken on November 9, 2006 showed a healed fracture of the second metatarsal. Dr. Salamone offered the following opinion:

“My impression is that [appellant] had suffered an injury to his right foot as early as August 9, 2006 which is characterized by the formation of a stress fracture at the base of the second metatarsal which was not recognized on initial x-rays due to his persistent gout symptoms and on follow up the presence of this stress fracture, which was, and is now, healed and asymptomatic, was discovered.”

On December 4, 2006 the Office accepted appellant’s August 9, 2006 injury for right foot sprain. In a decision dated January 24, 2007, the Office denied appellant’s claim of a recurrence of disability.

## LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.<sup>1</sup> “Disability” means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.<sup>2</sup>

When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.<sup>3</sup> A claimant seeking benefits has the burden of proof to establish the essential elements of his claim by the weight of the evidence,<sup>4</sup> including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.<sup>5</sup>

## ANALYSIS

The Office accepted that appellant injured his right foot in the performance of duty on August 9, 2006. Appellant bears the burden of proof to establish that the stress fracture later discovered in that foot, together with the resulting disability for work, are causally related to the August 9, 2006 employment injury.

There is only one opinion on causal relationship and it generally supports appellant’s claim. Dr. Salamone, the attending podiatrist, explained that the stress fracture went unnoticed in August 2006 because appellant had persistent symptoms of gout. But he reviewed x-rays obtained on October 24, 2006 and found a healed, or nearly healed, fracture at the base of the second metatarsal. Dr. Salamone concluded that this stress fracture occurred when appellant injured his right foot on August 9, 2006. The Board finds that Dr. Salamone’s opinion raises an uncontroverted inference of causal relationship. The presence of a healed or nearly healed stress fracture on October 24, 2006 points to an earlier injury and would appear to explain appellant’s continued right foot complaints following August 9, 2006. There is no medical opinion to the contrary.

However, Dr. Salamone should explain whether he reviewed the August 9, 2006 x-rays and should make clear whether they show a stress fracture at the base of the second metatarsal. If they do not, he should explain whether this means the fracture developed later, perhaps closer to September 21, 2006, when appellant presented with foot pain “for the last few days.” Dr. Salamone should address how long it typically takes a stress fracture to heal, or nearly heal,

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<sup>1</sup> 5 U.S.C. § 8102(a).

<sup>2</sup> 20 C.F.R. § 10.5(f) (1999).

<sup>3</sup> *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

<sup>4</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

and whether this is consistent with appellant's claim that the fracture occurred on August 9, 2006. He should also review whether appellant's record of complaints and clinical findings is consistent with a stress fracture on August 9, 2006.

The Board will set aside the Office's January 24, 2007 decision denying appellant's claim and will remand the case for further development of the medical evidence.<sup>6</sup> The Office shall then issue an appropriate final decision on whether the stress fracture in appellant's right foot and any resulting disability for work, are causally related to the August 9, 2006 employment injury.

### **CONCLUSION**

The Board finds that this case is not in posture for decision. Further, development of the medical opinion evidence is warranted.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 24, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: October 9, 2007  
Washington, DC

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

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

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

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<sup>6</sup> See *John J. Carlone*, 41 ECAB 345, 358 (1989) (finding that the medical evidence was not sufficient to discharge the claimant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship).