

Appellant submitted medical notes from the Family Practice Center of Salem, Inc. dated May 2 and June 6, 2007. On May 2, 2007 Dr. Richard L. Fawcett, a Board-certified family practitioner, related appellant's history of injury on that date, indicating that, while running in response to a call, he developed pain in the bottom of his right foot, which radiated into the bilateral portion of the right ankle. Examination revealed no instability in the ankle joint; no ligamentous laxities; and no tenderness on dorsiflexion or plantar flexion eversion or inversion maneuvers. Dr. Fawcett diagnosed right foot ligamentous sprain, tendinitis. In a June 6, 2007 follow-up report, Dr. Constantine V. Economou, a Board-certified family practitioner, stated that appellant continued to experience heel pain as a result of his work-related injury. He found good range of motion (ROM) in the right hip, knee and ankle without crepitus or tenderness, and good ROM of the right foot, with ligaments and tendons stable and intact. However, Dr. Economou's examination revealed tenderness over the calcaneal region, as well as a slow gait favoring the right heel. He diagnosed right foot tendinitis; right foot plantar fasciitis and right foot calcaneal pain. On June 6, 2007 Dr. Economou restricted appellant from running at work for three weeks.

The record contains a report of a June 6, 2007 x-ray of the right foot. The record also contains requests for authorization for a course physical therapy.

In a September 26, 2007 letter, the Office informed appellant that his claim had initially been treated as a simple, unchallenged claim with minor medical cost or no loss of work, but that, as the medical expenses had exceeded \$1,500.00, the case would have to be formally adjudicated. It further informed him that the evidence and information submitted was insufficient to establish that he had experienced the incident as alleged, or that he had a diagnosed condition that resulted from the incident. Appellant was advised to submit medical evidence which provided a diagnosis and a rationalized opinion explaining how the alleged incident caused the diagnosed condition.

Appellant submitted an October 4, 2007 report from Dr. Economou, who noted that appellant was seen in his office on May 2 and June 6, 2007 for a work-related right foot injury, which occurred while he was running to respond to a call. He related that appellant developed pain in the bottom of his right foot, "going around into the lateral portion of the right ankle." Appellant was given prednisone and instructed to take Tylenol and to alternate the use of ice and heat for pain. Subsequently a course of physical therapy was recommended, and Naprosyn was prescribed for pain. Noting that appellant had no preexisting foot conditions, Dr. Economou opined that his current foot condition was aggravated by running in response to a call at work on the date in question.

On October 9, 2007 appellant stated that his position at the employing establishment requires him to respond to emergencies and calls for assistance from coworkers, which at times requires him to run to the location of the emergency. He alleged that the inappropriate footwear provided by the employing establishment contributed to his injury. The record contains a position description for gardener supervisor and March 1, 2007 minutes from a staff meeting.

By decision dated November 1, 2007, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that his claimed medical condition was causally

related to the established work-related event. On November 20, 2007 appellant requested an oral hearing.

Appellant submitted notes dated October 8, 2007 from Dr. Economus reflecting his follow-up treatment for right foot pain. Dr. Economus diagnosed right foot tendinitis, resolved; right foot plantar fasciitis, resolved; and right foot calcaneal pain, resolved.

At a June 16, 2008 telephonic hearing, appellant testified that, on May 2, 2007, while running in response to a call from the contract center, he came down on his right foot and experienced severe, shooting pain. He stated that the incident was observed by a coworker.

By decision dated September 5, 2008, the hearing representative affirmed the November 1, 2007 decision. The representative found that the evidence was sufficient to establish that the May 2, 2007 incident occurred as alleged. However, the medical evidence was not sufficiently rationalized to establish that his right foot condition was causally related to the established event.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee, resulting from personal injury sustained while in the performance of duty.¹ The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."²

An employee seeking benefits under the Act has the burden of proof to establish 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 or specific condition for which compensation is claimed is causally related to the employment injury.³ When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," consisting of two components which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place, and in the manner alleged. The second is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.⁴

¹ 5 U.S.C. § 8102(a).

² This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

³ *Robert Broome*, 55 ECAB 339 (2004).

⁴ *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁵ An award of compensation may not be based on appellant's belief of causal relationship.⁶ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.⁷ Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.⁸

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.⁹

ANALYSIS

The Board finds that this case is not in posture for decision regarding whether appellant sustained an injury in the performance of duty.

An employee who claims benefits under the Act has the burden of establishing the essential elements of his claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.¹⁰ However, it is well established that proceedings under the Act are not adversarial in nature and, while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.¹¹

⁵ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁶ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁷ *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ 20 C.F.R. § 10.303(a).

⁹ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁰ See *Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); see also *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

¹¹ *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard*, *supra* note 10; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

The Office accepted that the May 2, 2007 running incident occurred as alleged, but found that there was no medical evidence that provided a diagnosis that could be connected to that injury. The Board finds, however, that the medical evidence of record supports that appellant sustained a work-related injury on May 2, 2007.

Dr. Economus consistently opined that the May 2, 2007 running incident caused or aggravated appellant's diagnosed conditions. On June 6, 2007 he stated that appellant continued to experience heel pain as a result of his work-related injury. Noting that appellant demonstrated tenderness over the calcaneal region, as well as a slow gait favoring the right heel, Dr. Economus diagnosed right foot tendinitis; right foot plantar fasciitis; and right foot calcaneal pain. In a narrative report dated October 4, 2007, he accurately described the history of injury, stating that appellant injured his right foot on May 2, 2007. Dr. Economus explained that appellant developed pain in the bottom of his right foot, "going around into the lateral portion of the right ankle." Noting that appellant had no preexisting foot conditions, he opined that his current foot condition was aggravated by running in response to a call at work on the date in question. On October 8, 2007 Dr. Economus diagnosed right foot tendinitis, resolved; right foot plantar fasciitis, resolved; and right foot calcaneal pain, resolved.

The remaining medical evidence of record also supports appellant's claim. On May 2, 2007 Dr. Fawcett related appellant's history of injury on that date, indicating that, while running in response to a call, he developed pain in his the bottom of his right foot, which radiated into the bilateral portion of the right ankle. Examination revealed no instability in the ankle joint; no ligamentous laxities; and no tenderness on dorsiflexion or plantar flexion eversion or inversion maneuvers. Dr. Fawcett diagnosed right foot ligamentous sprain, tendinitis.

The Board notes that, while none of the reports of appellant's attending physicians is completely rationalized, they are consistent in indicating that he sustained an employment-related foot injury and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet his burden of proof to establish his claim, they raise an uncontroverted inference between appellant's claimed condition and the accepted employment incident, and are sufficient to require the Office to further develop the medical evidence and the case record.¹² On remand the Office shall obtain a rationalized opinion from a qualified physician as to whether appellant's current condition is causally related to the accepted incident, and shall issue an appropriate decision in order to protect his rights of appeal.

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained an injury in the performance of duty.

¹² See *Virginia Richard*, *supra* note 10; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2008 and November 1, 2007 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded for further development consistent with this decision.

Issued: July 13, 2009
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