

inform anyone that he had injured his ankle. He called in sick from April 19 through 21, 2007, returned to work on Sunday, April 22, 2007, called in sick on Tuesday, April 24, 2007 and had not returned to work since that date.¹

By letter to the employing establishment dated May 15, 2007, appellant requested that a correction be made to his initial claim regarding the actual date of injury. He stated that the date of injury was actually April 18 and not April 25, 2007. Appellant related that he saw his primary care doctor on April 19, 2007 because of this injury and followed up with Dr. Denis P. Byrne, Board-certified in orthopedic surgery, on April 23, 2007.

By letter dated May 21, 2008, the Office advised appellant that he needed to submit additional factual and medical evidence in support of his claim. It stated that appellant had 30 days to submit the requested information.

Appellant submitted an April 19, 2007 disability slip from Dr. Andrew S. Lim, a specialist in family practice, who indicated that appellant was unable to work from April 19 to April 20, 2007 due to leg pain, an April 23, 2007 treatment note from Dr. Byrne, which indicated that appellant was being treated for right ankle pain and released him to return to work on April 26, 2007 and a May 2, 2007 treatment note, which stated that appellant was unable to work due to right ankle pain and recommended that he return to work on May 14, 2007.

In an April 23, 2007 report, Dr. Byrne stated that appellant had been bothered by some pain in his right ankle for the past couple of weeks with no particular injury. He advised that his job required him to stand most of the day while riding a machine, and also required him to frequently get up and off the machine. Dr. Byrne noted swelling and discomfort in the anterolateral and posterolateral aspect in the right ankle and advised that x-rays of his right ankle showed no fractures or dislocations and a well-preserved joint.

In two reports dated May 14, 2007, Dr. Byrne noted complaints of continuing discomfort in appellant's right ankle. He stated that on April 19, 2007 appellant felt a twist in his right ankle while getting down from his vehicle and had experienced pain since that time. Dr. Byrne released appellant to return to light duty and outlined restrictions of limited standing, walking and getting up and down from his equipment. He scheduled appellant for a magnetic resonance imaging (MRI) scan.

In a statement received July 3, 2007, appellant clarified that his injury occurred on April 19, 2007, at 1:20 a.m. and that he returned to work on April 22, 2007, at which time he informed his acting supervisor Angela Russell about his situation. He stated that Ms. Russell assigned him to work on damaged mail but that he stopped working after six hours because of his right ankle pain.

¹ The employing establishment submitted May 9, 2007 statements from two of appellant's supervisors, Brian Gilbert and Armand Scpiochio which indicated that they saw him at work on April 19, 2007 and did not witness him limping or in discomfort at any time. Mr. Scpiochio stated that he saw appellant working overtime on April 22, 2007 at which time his right ankle was wrapped in an ace bandage. He stated that when he asked appellant if he had injured his ankle at work, appellant replied "I do n[o]t think so."

By decision dated July 12, 2007, the Office denied the claim. It accepted that a work incident had occurred on April 19, 2007, but found that appellant failed to submit evidence indicating that the incident had caused a condition or disability. The Office stated that appellant had failed to submit a diagnosis of any medical condition related to work. It, therefore, found that appellant failed to establish that he sustained a right ankle injury in the performance of duty on April 19, 2007.

On August 7, 2007 appellant requested an oral hearing, which was held on February 27, 2008. At the hearing, the hearing representative indicated that the Office had already accepted that an incident had occurred at work on April 19, 2007 in its July 12, 2007 decision and that the only outstanding issue was whether appellant submitted sufficient medical evidence to establish that the employment incident caused a personal injury.

In an August 22, 2007 report, Dr. Byrne stated that appellant underwent an MRI scan on August 17, 2007 which indicated he had peroneus brevis tendinitis of the right ankle, with no evidence of rupture. He opined that appellant's ankle pain was subsequent to his April 19, 2007 work injury and noted that he remained on light duty.

In a March 4, 2008 report, Dr. Byrne reviewed the history of injury, noted the results of diagnostic tests and essentially reiterated his previous findings and conclusions. He stated that appellant's condition had improved with physical therapy and medication, with good strength and good range of motion. Dr. Byrne advised that he examined appellant on November 19, 2007, at which time he released him from treatment and noted that he was functioning at work without difficulty. He opined that, based upon a reasonable degree of medical certainty, his diagnosis was peroneus brevis tendinitis of the right ankle, which was a direct result of the April 2007 work injury.

By decision dated July 22, 2008, an Office hearing representative affirmed the July 12, 2007 decision denying appellant's claim. The hearing representative found, however, that there were unresolved and unexplained inconsistencies in both the factual and medical which cast serious doubt as to whether an injury was sustained at work in the manner alleged, and that therefore, appellant did not meet his burden of proof with regard to fact of injury.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that 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 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential

² 5 U.S.C. § 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.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 The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician 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 specific employment factors identified by the claimant.⁷ The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁸

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s condition became apparent during a period of employment nor her belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

The Board finds that the Office hearing representative erred, in his July 22, 2008 decision, in finding that appellant did not establish that an incident had occurred in the performance of duty on April 19, 2007. While appellant subsequently changed the date of injury that he stated in his May 2, 2007 Form CA-1 from April 25 to April 19, 2007 the Office in its July 12, 2007 decision accepted that he had sufficiently clarified the circumstances of the alleged incident such that he had established fact of injury. It found that the evidence appellant submitted was sufficient to establish that the April 19, 2007 incident occurred at the time, place and in the manner alleged. The Office hearing representative had also informed appellant to this effect at the February 27, 2008 hearing; therefore, there were insufficient grounds to change this finding in the July 22, 2008 decision, as the issue had been resolved and was no longer contested.

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

⁷ *Id.*

⁸ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Id.*

However, the question of whether the employment incident caused a personal injury can only be established by medical evidence.¹⁰ Appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on April 19, 2007 caused a personal injury and resultant disability.

Appellant submitted reports from Dr. Byrne in which he stated findings on examination and indicated that he had right ankle tendinitis, as indicated by an MRI scan. These reports, however, did not contain a probative, rationalized medical opinion relating this diagnosis to the April 19, 2007 incident at work. In his April 23 and May 14, 2007 reports, Dr. Byrne related appellant's history that he injured his right ankle on April 19, 2007 while exiting a heavy equipment vehicle. He noted that appellant had complained of pain ever since the incident had occurred. In both of these reports Dr. Byrne placed appellant off work and then released him to work with restrictions. He stated, in his August 22, 2007 report, that an MRI scan indicated peroneus brevis tendinitis of the right ankle and advised in his March 4, 2008 report that he had stopped treating appellant on November 19, 2007, as he was functioning at work without difficulty. Dr. Byrne opined that appellant's diagnosed right ankle condition, peroneus brevis tendinitis, was a direct result of the April 2007 work injury based on reasonable medical certainty.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹¹ Although Dr. Byrne presented a diagnosis of appellant's condition, he did not adequately address how this condition was causally related to the April 19, 2007 work incident. Dr. Lim's April 19, 2007 disability note merely indicated that appellant was kept out of work from April 19 to 20, 2007 due to leg pain. There is therefore insufficient rationalized evidence in the record that appellant's right ankle injury was work related. Appellant failed to provide a rationalized, probative medical opinion relating his current condition to any factors of his employment. Therefore, he failed to provide a report from a physician that explains how the work incident of April 19, 2007 caused or contributed to the claimed right ankle injury.

The Office advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the April 19, 2007 work accident would have caused the claimed injury. Accordingly, he did not establish that he sustained a right ankle injury in the performance of duty. The Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a right ankle injury in the performance of duty.

¹⁰ *John J. Carlone, supra* note 5.

¹¹ *See Anna C. Leanza, 48 ECAB 115 (1996).*

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2008 decision of the Office of Workers' Compensation Programs be affirmed as modified.

Issued: July 28, 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