United States Department of Labor
Employees' Compensation Appeals Board

J.K., Appellant	)	
and	)	**Docket No. 09-655**
	)	**Issued: October 5, 2009**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Phoenix, AZ, Employer	)	

Appearances:
Gordon Reiselt, Esq., for the appellant
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 January 7, 2009 appellant filed a timely appeal of the September 30, 2008 merit decision of the Office of Workers' Compensation Programs, which denied his occupational disease 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 April 14, 2006 appellant, then a 60-year-old lead transportation security officer, filed an occupational disease claim for a torn left Achilles tendon. He indicated that his injury occurred on or about October 1, 2005.[1] Appellant attributed his condition to working on a

[1] Appellant reported having previously sustained a slight tear of his left Achilles tendon in 1996. He also had a prior claim for left foot plantar fasciitis, which the Office denied.

slanted floor 8 to 10 hours per day, four to seven days per week. He also indicated that carrying passenger baggage and other items to the search area while walking on a slanted floor contributed to his condition. Appellant explained that his job required standing for extended periods of time. He noted that there was generally only one position -- the exit lane -- that allowed sitting. But at some checkpoints the x-ray position was also a seated position. Appellant noted that his pain diminished when working on a flat surface.

The employing establishment indicated that appellant worked 10-hour shifts, four days a week. His job consisted of 30-minute rotations through five work areas, which included x-ray, walk through metal detector, bag search, exit lane and wanding. With the exception of the exit lane, which was a seated position, the four other assignment areas generally required 30 minutes of standing. Depending on the particular checkpoint, the x-ray position could also be a seated position. The employing establishment explained that altogether there was a possibility that appellant might stand a maximum of 2 hours with 30 minutes sitting at the exit lane.[2] Appellant's job also required the ability to lift 40 pounds. The employing establishment indicated that most of the time employees would lift baggage from one table and carry it a few feet to another table. Very seldom would they lift baggage from the floor. The employing establishment also noted that appellant received a modified assignment on March 23, 2006, which included a 10-pound lifting restriction and no standing for long periods of time. As of April 30, 2006, appellant was placed exclusively on the exit lane, which was a seated position.

Appellant was under the care of Dr. Jason C. Harrill, a podiatrist, who had treated appellant in January 2004 for an injury to his left peroneus brevis tendon. When Dr. Harrill saw appellant on March 30, 2006 he diagnosed left Achilles tendinitis, new onset. According to him, appellant denied any significant increases in athletic activities, but stated that he had been lifting heavy bags at work for airport security. Dr. Harrill placed appellant in a cam walker and recommended that he obtain a magnetic resonance imaging (MRI) scan.

An April 3, 2006 MRI scan of the left ankle revealed, among other things, a Type I partial tear of the Achilles tendon.

Dr. Harrill reviewed the MRI scan on April 10, 2006 and diagnosed left Achilles tendinitis. He recommended physical therapy and advised appellant to return for follow-up in three weeks. Dr. Harrill also completed a duty status report (Form CA-17). When he next saw appellant on April 24, 2006, he reported that appellant's Achilles tendinitis was improving. Dr. Harrill recommended continued use of the cam walker and another 2½ weeks of physical therapy. Appellant returned to him on May 8, 2006, at which time he reported feeling approximately 75 percent better. Dr. Harrill recommended continued physical therapy. He also advised appellant to continue with light duty for one more month. Dr. Harrill provided another duty status report identifying appellant's physical restrictions.

[2] Appellant also received two 15-minute breaks and a 30-minute lunch break. Although not entirely clear from the employing establishment's June 7, 2006 statement, the 2½ hour rotation among the five work areas presumably occurred multiple times during the course of appellant's 10-hour shift. Otherwise, the employing establishment has accounted for only 3½ hours out of a scheduled 10-hour workday.

In a decision dated June 22, 2006, the Office denied appellant's occupational disease claim. It found that the evidence did not establish that the claimed medical condition was employment related.

On June 20, 2007 appellant, with the assistance of counsel, requested reconsideration. Additional medical evidence received by the Office included a December 11, 2006 report from Dr. Harrill and the doctor's treatment notes dated April 27 and May 9, 2007. In his December 11, 2006 report, Dr. Harrill noted that appellant was a long-standing patient who he had treated for plantar fasciitis as well as Achilles tendinitis. He also indicated that he had performed surgery on August 3, 2006 to repair a partial tear of appellant's left Achilles tendon. Since his surgery appellant had reportedly undergone physical therapy and had progressed very well. Dr. Harrill also noted that appellant had been on light duty since his surgery. He stated that he believed appellant's "job as a transportation security screener aggravated his condition of Achilles tendinitis with partial tear...."[3]

In April and May 2007, Dr. Harrill treated appellant for a recurrence of his left Achilles tendinitis. When appellant saw Dr. Harrill on April 27, 2007, appellant reported that his symptoms had worsened over the last several months. He advised Dr. Harrill that his condition was aggravated with increased walking and particularly with his job at the airport. Appellant also reported that lifting heavy bags as well as working on ramps tended to make his ankle and Achilles tendon more painful. Dr. Harrill diagnosed left Achilles tendinitis, recalcitrant in nature, secondary to tear. He recommended that appellant decrease his activity and resume wearing a cam walker as necessary. Dr. Harrill also recommended another MRI scan. Appellant returned on May 9, 2007 at which time Dr. Harrill reviewed the latest MRI scan. Dr. Harrill noted a longitudinal split tear with increased fusiform thickening compared to appellant's previous MRI scan study. He diagnosed left Achilles tendinosis with tear and increased fusiform thickening. After discussing various treatment options, appellant reportedly opted to pursue conservative measures. Dr. Harrill advised appellant to return on an as needed basis.

The Office reviewed the claim on the merits, but denied modification in a decision dated September 17, 2007.

On June 26, 2008 appellant's counsel filed another request for reconsideration. Counsel provided a recent report from Dr. Harrill and copies of appellant's medical records regarding an August 27, 1996 injury. The 1996 treatment records indicated that appellant slipped while working on a ladder and sustained a partial tear of the left Achilles tendon. He was treated with anti-inflammatory medications (NSAID) and his foot was placed in a cast. Soon after the injury appellant relocated to Arizona and was reportedly referred to an orthopedist in the Scottsdale area.

In a report dated June 22, 2008, Dr. Harrill stated that he believed appellant's condition of Achilles tendinosis was aggravated by his employment. He was reportedly unaware that appellant had previously filed a claim for left foot plantar fasciitis, which had been denied.

[3] The December 11, 2006 report was solicited by appellant's counsel. Dr. Harrill advised counsel that if he wanted him to address the contribution of appellant's previous tear (1996) on his current condition then counsel would have to provide him with the relevant medical records.

Dr. Harrill explained that plantar fasciitis and Achilles tendinitis can be related to an overuse injury and/or biomechanical dysfunction. He also stated that lifting heavy baggage and walking on grades can aggravate these conditions. Dr. Harrill noted that he had personally observed appellant and his duties as a transportation safety screener on several occasions. He further stated that he appreciated the fact that screeners are rotated to several different positions during a shift. However, Dr. Harrill noted that appellant's pathology, particularly the partial tear of his Achilles tendon, could be irritated by even short distance walking on level floors. Additionally, he indicated his awareness that appellant had been placed on sedentary duties as of April 30, 2006. Dr. Harrill also reviewed the medical records regarding appellant's August 27, 1996 left Achilles tendon injury. He explained that the Achilles tendon is typically the strongest tendon in the body, but is prone to dysfunction particularly with overuse. Dr. Harrill further stated that the Achilles tendon does not heal well after injury due to hypovascularity. According to him, appellant's Achilles tendon pathology started in 1996 after a fall from a ladder and never adequately healed. Dr. Harrill explained further that the partial tear sustained in 1996 was exacerbated by walking on grades and lifting heavy luggage. Lastly, he stated that given the slow healing nature of Achilles tendon pathology, appellant's condition may well be permanent and could flare-up on occasion depending on his level of activity.

By decision dated September 30, 2008, the Office denied modification.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[4] 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.[5]

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 identified employment factors.[6]

[4] 5 U.S.C. §§ 8101-8193 (2006).

[5] 20 C.F.R. § 10.115(e), (f) (2008); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's 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.*

[6] *Victor J. Woodhams*, *supra* note 5.

ANALYSIS

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[7] Appellant's podiatrist, Dr. Harrill, explained in his June 22, 2008 report why he attributed the left Achilles tendinosis to employment activities by way of aggravation. There is no contrary medical evidence of record. Although Dr. Harrill's opinion is insufficient to discharge appellant's burden of proving that the claimed condition is causally related to his federal employment, this evidence is sufficient to require further development of the case record by the Office.[8] On remand, the Office should refer appellant, the case record, and a statement of accepted facts to an appropriate orthopedic specialists for an evaluation and a rationalized medical opinion regarding whether appellant's claimed left Achilles condition is causally related to his federal employment. After the Office has developed the case record to the extent it deems necessary, a *de novo* decision shall by issued.

CONCLUSION

The Board finds that the case is not in posture for decision.

[7] *Horace L. Fuller*, 53 ECAB 775, 777 (2002); *James P. Bailey*, 53 ECAB 484, 496 (2002); *William J. Cantrell*, 34 ECAB 1223 (1983).

[8] *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2008 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: October 5, 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