

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

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**M.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
New York, NY, Employer**

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**Docket No. 09-582  
Issued: September 11, 2009**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 29, 2008 appellant, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated July 8, 2008 finding that she had not established an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on August 15, 2007.

**FACTUAL HISTORY**

On August 15, 2007 appellant, then a 44-year-old carrier, filed a traumatic injury claim alleging on that date at 1:00 p.m. she was walking (delivering) express pieces and injured her right leg.

In support of appellant's claim, she submitted a note dated September 27, 2007 from Dr. Robert A. Marini, a physician Board-certified in physical medicine and rehabilitation,

diagnosing right leg derangement. She reported right leg pain with numbness to the lateral aspect of the leg. Appellant stated that she initially injured her leg on August 26, 2002. Dr. Marini repeated his diagnosis in reports dated October 25, 2007 to February 28, 2008.

In a report dated January 23, 2008, Dr. Steven C. Sheskier, a Board-certified orthopedic surgeon, stated that appellant reported pain in her right heel since August 2007. He diagnosed plantar fasciitis and noted that x-rays did not demonstrate a stress fracture. On March 5, 2008 Dr. Sheskier opined that appellant's plantar fasciitis was secondary to overuse from her work as a letter carrier.

In a letter dated May 27, 2008, the Office informed appellant that her claim was initially treated as a simple uncontroverted case which resulted in minimal or no lost time from work and which allowed for administrative payments up to \$1,500.00. As appellant's medical expenses exceeded \$1,500.00, it would adjudicate her claim. The Office noted that additional evidence was required in support of her claim, stating:

“In completing the [F]orm CA-1, you stated that you injured your right leg while ‘walking express pieces.’ Please provide a detailed description as to how your injury occurred. (For example, if you fell, state how far you fell, how you landed, etc.)

“Did you have any similar disability or symptoms before the injury? If so, describe the prior condition. Please send records of all prior treatment.

“We have received several reports from your treating physician, Dr. Marini, diagnosing you with ‘right leg derangement.’ However, no explanation as to how the incident of August 15, 2007 has resulted in the diagnosed condition has been provided. Neither did we did receive a[n] MRI [magnetic resonance imaging scan] report supporting the above diagnosis.”

The Office allowed 30 days for a response.

On May 22, 2008 Dr. Marini diagnosed right leg internal derangement with peroneal tendinitis. On May 14, 2008 Dr. Sheskier recommended physical therapy for recurrent and recalcitrant plantar fasciitis. In a note dated June 11, 2008, he stated that appellant was a letter carrier with “an on-the-job overuse syndrome, plantar fasciitis.” Dr. Sheskier stated that appellant had pain since August 2007. He stated, “I feel that the history [appellant] is giving as a letter carrier is consistent with the etiology of plantar fasciitis in this specific patient.”

By decision dated July 8, 2008, the Office denied appellant's claim on the grounds that she failed to submit sufficient factual evidence to establish an incident in the performance of duty on August 15, 2007.<sup>1</sup>

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<sup>1</sup> Following the Office's July 8, 2008 decision, appellant submitted additional new evidence. As it did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

## LEGAL PRECEDENT

The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.<sup>2</sup> An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> 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 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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. 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. An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden of proof where there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>5</sup>

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. 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.<sup>6</sup>

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<sup>2</sup> 20 C.F.R. § 10.5(ee).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

### ANALYSIS

Appellant alleged that she injured her right leg while walking express pieces on August 15, 2007. She did not offer any further factual information in support of her claim. Appellant submitted a report dated September 27, 2007 from Dr. Marini, diagnosing right leg derangement. According to Dr. Marini, he reported right leg pain with numbness to the lateral aspect of the leg and stated that appellant injured her leg on August 26, 2002. This report does not support appellant's claimed right leg injury on August 15, 2007. Dr. Marini instead indicated that appellant sustained an injury on August 26, 2002.

Appellant also submitted reports from Dr. Sheskier, beginning January 23, 2008 stating that she reported pain in her right heel since August 2007. Dr. Sheskier diagnosed plantar fasciitis and opined that appellant's condition was secondary to overuse from her work as a letter carrier. This report is not fully inconsistent with appellant's claim, in which she alleged a right leg injury not a right foot or heel injury. Appellant through the use of a claim for traumatic injury indicated that she believed that her injury occurred on a single workday rather than as an overuse injury.

The Board finds that the factual and medical evidence in the record is not sufficiently detailed to establish that an employment incident occurred on August 15, 2007. There are conflicting dates of injury and varying diagnoses. In order to establish appellant's claim, she must submit the factual information requested by the Office on May 27, 2008. Due to the deficiencies and inconsistencies in the factual and medical evidence, appellant's claim was properly denied.

### CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a right leg injury on August 15, 2007 as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 8, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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