

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

T.M., Appellant)	
)	
and)	Docket No. 10-1033
)	Issued: December 2, 2010
U.S. POSTAL SERVICE, POST OFFICE,)	
Morris, IL, Employer)	
)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

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

JURISDICTION

On February 25, 2010 appellant filed a timely appeal of a February 1, 2010 merit decision which affirmed the denial of her claim. 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 established that she sustained a left ankle injury causally related to factors of her federal employment.

FACTUAL HISTORY

On March 25, 2009 appellant, then a 50-year old carrier technician filed an occupational disease claim alleging that on December 12, 2006 she became aware that walking everyday on uneven ground caused sprains, twisting and swelling of her left ankle. Her supervisor controverted the claim, noting that appellant had only carried a route for 11 days since April 30, 2007 and had stopped work in April 2008 due to other medical issues.

In a January 19, 2009 report, Dr. Paul Bishop, a podiatrist, related that appellant had explained her current job, which she described as walking 10 to 14 miles a day, carrying heavy

loads. He stated that “years of carrying and walking have most likely contributed to advancing her degenerative joint disease.” Dr. Bishop advised that appellant had developed a severe arthritic deformity of the left ankle, for which she had undergone a previous ankle joint arthroscopy. He noted that appellant required an ankle fusion or ankle diastasis procedure, following which she would be able to perform sedentary work.

In a supplemental statement dated April 13, 2009, appellant’s supervisor explained that appellant had undergone ankle surgery on May 1, 2007 and had thereafter used sick leave until August 21, 2007. Appellant did not file a claim for compensation and the medical report submitted in support of sick leave did not state that the injury was work related. Her supervisor reiterated that appellant had not carried a route for more than one year.

By decision dated July 28, 2009, the Office denied appellant’s claim. It found that appellant had not established occupational exposure as alleged as there was inconsistency between the history of injury she reported to her physician and the history provided by the employer.

Appellant thereafter requested a hearing before the Office Branch of Hearings and Review. A hearing was held on November 10, 2009 at which appellant appeared and testified. Following the hearing appellant submitted additional medical evidence to the record.

On June 19, 2006 Dr. Naila Bhurgri, a family practitioner, reported that appellant was seen for left ankle pain and swelling. She noted that appellant walked a lot at work, but also noted that the mechanism of injury was unknown.

An x-ray report of appellant’s left ankle dated December 13, 2006 from Dr. Robert G. Dirmish, a radiologist, noted a history of nontraumatic ankle pain. This report stated findings of mild narrowing of the tibiotalar joint with adjacent spur formation, consistent with osteoarthritis.

On February 20, 2009 Dr. Bishop reported that appellant was to undergo ankle fusion on March 11, 2009. He noted that appellant had significant ankle joint arthritis with arthrosis of the joint. Progress notes from Dr. Bishop’s office dated March 25 through October 28, 2009 documented appellant’s treatment for continuing pain complaints.

In a narrative report dated June 3, 2009, Dr. Bishop stated that appellant had a several-year history of left ankle pain. At initial evaluation, appellant presented with very extensive degenerative joint disease and she related that she walked 10 to 14 miles a day carrying a heavy mailbag. In April 2007, she underwent ankle arthroscopy. Appellant returned to work and had continued pain. She then underwent ankle arthrodiastasis in 2008 due to worsening arthritic change. Dr. Bishop related that appellant again experienced worsening pain and that she would not be able to return to work. He concluded: “We believe this degenerative joint disease was causal from her work. It was definitely aggravated and accelerated in its degeneration by her having to walk the distances that she had to walk carrying heavy mailbags on uneven surfaces.”

On June 16, 2009 Dr. Bishop reported that appellant would not be able to return back to her work in her job at the same level “to be able to carry, process, lift or deliver mail.”

By decision dated February 1, 2010, the Office hearing representative modified the prior decision by finding that appellant had carried and delivered mail for a number of years. The hearing representative found that appellant did not establish that she carried mail between 10 to 14 miles day and affirmed the denial of appellant's claim as the medical evidence of record was not based upon a full and accurate history of her employment and was insufficient to establish causal relationship.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.¹

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and the identified factors. The belief of appellant that the condition was caused or aggravated by the identified factors is not sufficient to establish causal relation.²

ANALYSIS

Appellant filed a claim on March 25, 2009 alleging that in December 2006 she became aware that walking on uneven ground as a letter carrier caused a left ankle injury. The Office accepted that appellant worked as a letter carrier until May 2007. It denied her claim because the medical evidence of record did not establish that walking as a letter carrier caused her diagnosed left ankle condition. The Board will affirm this finding.

The medical evidence establishes that appellant sought medical treatment in 2006 for left ankle pain. On June 19, 2006 Dr. Bhurgri reported that she was seen for ankle pain and swelling. Although he noted that appellant walked at work, she concluded that the mechanism of injury was unknown. On December 13, 2006 Dr. Dirmish reported a history of nontraumatic ankle pain. Appellant only carried a mail route for 11 days after April 30, 2007, having undergone left ankle surgery on May 1, 2007. Although appellant's claim is that she was aware of her employment-related ankle injury in 2006, the record indicates that she did not file a claim at that time. In support of her request for sick leave at the time of the May 2007 surgery, appellant did not relate that her condition was work related. The evidence of record from 2006 and 2007 does not support a finding that appellant's walking as a letter carrier caused or contributed to a left ankle injury.

In 2009 appellant's treating podiatrist, Dr. Bishop obtained a history of appellant walking 10 to 14 miles a day and carrying a heavy mailbag. He advised that this work activity

¹ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

² *Lourdes Harris*, 45 ECAB 545 (1994).

aggravated her degenerative joint disease of the ankle. Dr. Bishop's opinion in this regard is however of limited probative value as he did not have an accurate history of appellant's employment exposure to walking. Dr. Bishop did not acknowledge in any of his reports that appellant had not carried mail since May 2007. Lacking sufficient medical history and medical rationale, Dr. Bishop's reports are of limited probative value.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her left ankle condition was causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 1, 2010 be affirmed.

Issued: December 2, 2010
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