



On appeal, appellant contends that his claim was denied because his treating physician made an error with regards to the date of the incident. He also contended that his supervisor and physicians agree that his injury occurred while he was performing his federal duties.

### **FACTUAL HISTORY**

On October 23, 2009 appellant, then a 35-year-old city mail carrier, filed a traumatic injury claim alleging that on October 19, 2009, during the course of his federal duties, he stepped into a water meter pothole. He noted that at that time his foot sank about two feet and his ankle bent back, thereby causing injuries to his ankle and foot.

In support of his claim, appellant submitted work status reports and a medical report by Dr. Bruce McCarthy, a Board-certified orthopedic surgeon. In an October 30, 2009 work status report form, Dr. McCarthy noted a strain to appellant's right foot/ankle. In a note of the same date, he indicated that appellant had been referred to him by Dr. Maria C. Soriano, a Board-certified pediatrician who also is a family practitioner, approximately one week after injuring his ankle. Dr. McCarthy noted that appellant stepped in a hole on October 19, 2009, had immediate pain and has been limping ever since. He stated that appellant was having a terrible time ambulating and opined that he could not work in the immediate future. In a November 5, 2009 report, Dr. McCarthy checked a box indicating that appellant had a torn ligament in his right ankle and stated that he could not work at that time.

By letter dated November 10, 2009, the employing establishment controverted appellant's claim based on performance of duty and causal relationship.

In a November 6, 2009 report, Dr. McCarthy stated that his examination showed that appellant is point tender over the posterior calcaneal talar ligament, which is a serious but unusual ligament tear. He did not believe that appellant could return to work at this time. In a November 19, 2009 report, Dr. McCarthy stated that appellant was making nice progress. He noted that appellant will ambulate, but not on irregular surfaces. Dr. McCarthy noted that it was hard for appellant to get up and down. He noted that appellant remained point tender over the posterior talofibular ligament but there is no subluxation present. Dr. McCarthy recommended an intensive physical therapeutic exercise program. In a November 25, 2009 note, he stated that appellant had done very well in his rehabilitation exercises and that his ankle is less tender and was stable. Dr. McCarthy stated that appellant would attempt to return to regular duty and that he discharged him on a permanent basis without consideration of impairment.

In an October 24, 2009 note, Dr. Soriano assessed appellant with right foot heel injury. She noted that on October 19, 2009 while at work he stepped in a pothole that was about two feet deep and twisted and hurt his foot, ankle and heel.

By decision dated January 22, 2010, the Office denied appellant's claim. It found that the medical evidence does not demonstrate that the claimed medical condition is related to the established work-related event.

On January 27, 2010 appellant requested a review of the written record by an Office hearing representative. In support thereof, he submitted a letter from Dr. McCarthy dated

January 28, 2010 wherein he noted that he was enclosing a copy of his records and noted that these records state that appellant injured himself on October 30, 2009 while working. Dr. McCarthy stated that appellant's injury "is definitely from a work related trauma."

By decision dated April 12, 2010, the hearing representative affirmed the January 22, 2010 Office decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including the fact that an 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>3</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.<sup>4</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>5</sup>

Causal relationship is a medical issue<sup>6</sup> 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 of the physician must be based on a complete factual and medical background of the claimant,<sup>7</sup> must be one of reasonable medical certainty,<sup>8</sup> 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.<sup>9</sup>

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<sup>2</sup> 5 U.S.C. § 8122(a).

<sup>3</sup> *Id.*

<sup>4</sup> *John J. Carlone*, 41 ECAB 345 (1989).

<sup>5</sup> *Shirley A. Temple*, 48 ECAB 404 (1997).

<sup>6</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>7</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>8</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>9</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

### ANALYSIS

It is not disputed that appellant experienced a work incident on October 19, 2009. However, the Office denied his claim for the reason that the medical evidence did not establish a causal relationship between a diagnosed medical condition and the work incident.

The Board finds that appellant has not established a causal relationship between a diagnosed medical condition and the October 19, 2009 work incident. The reports of Dr. McCarthy are of limited probative value on the issue of causal relationship. Dr. McCarthy stated that appellant was point tender over the posterior calcaneal talar ligament, which was a serious but unusual ligament tear. However, he does not adequately explain how appellant's October 19, 2009 employment incident caused or contributed to this condition. In the January 28, 2010 report, Dr. McCarthy briefly stated that appellant's injury was related to an October 30, 2009 incident which occurred when he was working and stated that it was "definitely from a work related trauma." Although he used an incorrect date of injury in this report, this does not constitute an error fatal to appellant's claim as his other reports included the October 19, 2009 date maintained by him. However, the Board finds that Dr. McCarthy does not provide any rationalized explanation linking appellant's diagnosed condition to the employment incident; he offered no medical explanation for his conclusion.

Similarly, Dr. Soriano noted the work incident and assessed appellant with right foot/heel injury, but never provided a rationalized explanation linking the two.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor belief that the condition was caused by his employment is sufficient to establish a causal relationship.<sup>10</sup> Appellant has not provided a well-rationalized medical opinion linking a medical diagnosis to his accepted employment incident. Accordingly, the Office properly denied his claim.

### CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty on October 19, 2009, as alleged.

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<sup>10</sup> *D.I.*, 59 ECAB 158 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 12 and January 22, 2010 are affirmed

Issued: February 17, 2011  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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