United States Department of Labor
Employees' Compensation Appeals Board

T.H., Appellant	)	
and	)	**Docket No. 10-595**
	)	**Issued: January 26, 2011**
U.S. POSTAL SERVICE, DEL CITY FINANCE UNIT, Del City, OK, Employer	)	

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 16, 2009[1] appellant filed a timely appeal of the July 1, 2009 merit decision of the Office affirming the denial of his claim for a traumatic injury. 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 established that he sustained right ankle and foot injuries on May 9, 2008 as alleged.

[1] Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of the Office's decision. *See* 20 C.F.R. § 501.3(f)(2). As the Office's decision was issued on July 1, 2009, the 180-day computation begins July 2, 2009. 180 days from July 2, 2009 was December 28, 2009. Since using December 30, 2009, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is December 16, 2009 which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

On appeal, appellant contends that Dr. Michael K. Wilson, an attending Board-certified internist, submitted sufficient medical opinion to establish his claim for compensation.

FACTUAL HISTORY

On September 22, 2008 appellant, then a 51-year-old clerk, filed a traumatic-injury claim (Form CA-1) alleging that on May 9, 2008 he twisted his right ankle when he tripped over a rod sticking out of a concrete parking bumper at the employing establishment. He stated that on three occasions Joe Drew, a supervisor, refused to file a claim on his behalf. The employer controverted appellant's claim, contending that it was not filed within 30 days of the claimed injury.

In a September 25, 2008 accident report, Mr. Drew stated that on May 12, 2008 appellant informed him that he had stubbed his toes on a concrete parking bumper with rods sticking out two to four inches above the bumper. When asked if he was okay appellant responded yes. As a result, Mr. Drew did not take a statement from him regarding the alleged injury. Subsequently, appellant complained to Mr. Drew about his foot and ankle problems. Mr. Drew noted that appellant was a diabetic and had previously complained about foot problems.

In treatment notes dated January 28 to August 25, 2008, Dr. Wilson listed a two-month history of a painful callous on the bottom of appellant's right foot which progressively worsened. On physical examination he diagnosed plantar wart on submetatarsal one on the right foot, exostosis of the lateral aspect of the fourth right toe, hammertoe of the fourth and fifth right toes, onychomycosis of the first, second and third toes on the left and on the first toe on the right, possible peripheral vascular disease, verruca plantaris of the right foot and noninsulin-dependent diabetes mellitus. On June 26, 2008 Dr. Wilson debrided the plantar wart on submetatarsal one. No sign of any other infection or ulceration was noted. Dr. Wilson advised that the neuropathy condition was of unknown origin. Although appellant's right heel spur syndrome and plantar fasciitis showed some improvement, the conditions were aggravated by his job which required a great deal of standing and lifting and carrying heavy weight. He released appellant to return to work four hours a day. In a September 24, 2008 disability certificate, Dr. Wilson returned appellant to full-duty work with no restrictions.

By letter dated October 10, 2008, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It requested factual and medical evidence, including a rationalized medical report from an attending physician which described a history of injury and all prior industrial and nonindustrial injuries to similar parts of the body, a firm diagnosis, findings, symptoms and test results treatment provided, prognosis, period and extent of disability and opinion with medical reasons on why the diagnosed condition was caused or aggravated by the alleged May 9, 2008 incident.

In an October 6, 2008 letter, the employing establishment controverted appellant's claim on the grounds that the evidence failed to establish the claimed medical condition and employment incident.

In an undated letter, appellant stated that he notified Mr. Drew about his alleged injury on May 12, 2008. He reiterated that Mr. Drew refused to file a claim on his behalf on several

occasions. Appellant sought medical treatment for his ankle condition from Dr. Wilson in July 2008.

In a November 13, 2008 medical report, Dr. Wilson noted a history that on May 9, 2008 appellant injured his right foot and ankle while at the employing establishment. Appellant did not receive any treatment on the date of injury. He reviewed an August 18, 2008 magnetic resonance imaging (MRI) scan of appellant's right ankle and rear foot which demonstrated thickening of the proximal aspect of the plantar aponeurosis with adjacent reactive marrow edema within the calcaneus that was indicative of heel pain syndrome/proximal plantar fasciitis. The degree of bone marrow edema in the calcaneus was somewhat greater than expected and a stress response or a contusion was suspected. The MRI scan further demonstrated a partial tear of the distal aspect of the posterior tibial tendon near the navicular insertion. Mild tendinosis/tenosynovitis of the distal aspect of the peroneus longus tendon, mild retrocalcaneal bursitis, small subtalar and tibiotalar effusions and dorsal calcaneal spur was demonstrated. Appellant was placed in a soft cast and a removable cast boot and on restrictions for eight to ten weeks, when he was temporarily totally disabled. Dr. Wilson opined that appellant's heel pain and rupture of the posterior tibial tendon were a direct result of the alleged May 9, 2008 incident.

By decision dated December 10, 2008, the Office denied appellant's claim. It found that the May 9, 2008 incident occurred as alleged, but the medical evidence was insufficient to establish that he sustained a medical condition causally related to the accepted incident.[2]

On January 2, 2009 appellant requested a telephonic oral hearing with an Office hearing representative regarding the December 10, 2008 decision.[3] In treatment notes dated January 19 and February 9, 2009, Dr. Wilson reiterated that appellant underwent endoscopic plantar fasciotomy to treat his right foot plantar fasciitis.

In an April 27, 2009 report, Dr. Wilson listed a history that appellant sustained an injury while stepping on metal protruding from a parking barrier while at work. He reiterated the findings of the August 18, 2008 MRI scan. Dr. Wilson stated that the partial tear of the distal tendon on the right foot and edema within the calcaneus of the right heel required significant trauma. A tendon would not simply tear or a bone swell from routine standing or walking. Dr. Wilson advised that since the only history of trauma sustained by appellant was the May 9, 2008 employment incident, it was the cause of his claimed injury. He further advised that the injury would not have occurred as a result of appellant's routine job requirements.

In a May 25, 2009 letter, appellant's attorney contended that the medical evidence of record was sufficient to establish his claim for compensation.

By decision dated July 1, 2009, an Office hearing representative affirmed the December 10, 2008 decision. She found that appellant failed to submit sufficient medical

[2] Appellant retired from the employing establishment effective November 3, 2008.

[3] It appears that appellant inadvertently dated his request for a telephonic hearing as January 2, 2008 rather than January 2, 2009 as it was postmarked January 2, 2009 and received by the Office on January 6, 2009.

evidence to establish that his right foot condition was caused by the May 9, 2008 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[4] 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 filed within applicable time limitation; that an injury was sustained while 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.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.[6]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.[7] In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.[8]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[9] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[10] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[11]

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[4] 5 U.S.C. §§ 8101-8193.

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

[6] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 5.

[7] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[8] *Linda S. Jackson*, 49 ECAB 486 (1998).

[9] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

[10] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[11] *Charles E. Evans*, 48 ECAB 692 (1997).

ANALYSIS

The Office accepted that appellant tripped over a rod sticking out of a concrete parking bumper on May 9, 2008 while working as a clerk at the employing establishment. The Board finds, however, that the medical evidence submitted is insufficient to establish that his right ankle and foot conditions were caused or aggravated by the May 9, 2008 employment incident.

Appellant submitted medical records from Dr. Wilson, an attending Board-certified internist. The first treatment note following the accepted employment incident was dated June 26, 2008. Dr. Wilson debrided appellant's plantar wart on the submetatarsal one on the right foot. He found no sign of any other infection or ulceration. Dr. Wilson did not provide any history of the accepted incident or other findings related to the right ankle. He did not address the history of the May 9, 2008 employment incident as provided by appellant. Dr. Wilson also did not address the history of appellant's preexisting right foot plantar wart condition. He did not discuss how appellant's right foot conditions or surgery were caused or aggravated by the May 9, 2008 employment incident. In an August 25, 2008 treatment note, Dr. Wilson attributed appellant's right heel spur syndrome and plantar fasciitis conditions to the standing and lifting and carrying of heavy weights in his occupation rather than to the accepted May 9, 2008 tripping incident. He did not address the history of the May 9, 2008 employment incident as provided by appellant or provide a medical opinion alleging a causal relationship between the diagnosed right foot conditions and the accepted employment incident.

Dr. Wilson first mentioned the May 9, 2008 employment incident in a November 13, 2008 report. However, he merely listed the date of the accepted incident and stated that appellant injured his right foot and ankle while working at the employing establishment. Dr. Wilson did not provide any detailed description of the incident or explain how appellant's diagnosed heel pain and rupture of the posterior tibial tendon based on the August 18, 2008 MRI scan results and temporary total disability were causally related to the May 9, 2008 employment incident.[12]

On April 27, 2009 Dr. Wilson described the May 9, 2008 employment incident as appellant stepping on metal protruding from a parking barrier at work. This description does not cure the deficiency in appellant's claim. Dr. Wilson attributed appellant's partial tear of the posterior distal tendon of the right foot and edema within the calcaneus of the right heel to the accepted employment incident because it was the only history of trauma sustained. He did not explain how stepping on or tripping over a metal rod constituted a trauma significant to cause the diagnosed conditions. Dr. Wilson also did not explain why, if appellant experienced a significant trauma when he tripped on May 9, 2008, he did not complain about any injury during his June 26, 2008 examination. The Board notes that the mere fact that appellant was asymptomatic or that his conditions manifested themselves during a period of employment does not raise an inference of causal relation.[13]

[12] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[13] *See Ernest St. Pierce*, 51 ECAB 623 (2000).

Dr. Wilson found that appellant could initially work four hours a day and subsequently perform full-duty work with no restrictions. He did not provide an adequate explanation of how the May 9, 2008 employment incident caused the diagnosed conditions. As noted, he originally noted a preexisting history of callouses and plantar wart. He then attributed appellant's right foot condition to standing and lifting heavy weight. Thereafter, Dr. Wilson diagnosed a partial tear of the distal tendon that required significant trauma and not routine walking or standing. He did not provide sufficent medical opinion on causal relationship between any diagnosed condition and the accepted employment incident.

The Board finds that appellant failed to submit rationalized medical evidence, based on a complete factual and medical background, establishing that he sustained right ankle and foot injuries causally related to the accepted May 9, 2008 employment incident. Appellant did not meet his burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained right ankle and foot injuries on May 9, 2008, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the July 1, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 26, 2011
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