

FACTUAL HISTORY

On August 11, 2012 appellant, then a 29-year-old letter carrier, filed a traumatic injury claim alleging that on July 19, 2012 he felt a sharp pain in his right ankle while delivering mail on Grandview Avenue. He claimed that he tore tendons in his right foot and ankle and sustained a fracture. In an August 9, 2012 prescription note, Dr. Jack M. Bondi, an attending podiatrist, diagnosed right ankle torn tendons and fracture.

In a letter dated August 30, 2012, OWCP requested additional factual and medical evidence in support of appellant's traumatic injury claim. Appellant provided a statement on September 13, 2012 that described a May 14, 2012 employment injury when he fell on his right ankle.² He sustained a fracture of his right ankle and was in a cast until June 12, 2012 and then a walking boot for an additional three weeks. Appellant returned to work on July 11, 2012. He stated that, while delivering mail, he felt a sharp pain and a tear-like sensation in his right ankle. Appellant initially filed a recurrence of disability under the May 14, 2012 traumatic injury claim. He related that additional medical tests demonstrated two new fractures, two torn tendons and other injuries to his right ankle that were not previously diagnosed.

By decision dated October 3, 2012, OWCP denied appellant's claim. It found that he failed to submit sufficient medical evidence to establish that his right ankle condition was related to the July 19, 2012 employment incident.

On October 10, 2012 counsel requested an oral hearing before an OWCP hearing representative. In a June 12, 2012 treatment report, Dr. Bondi described appellant's injury of twisting his ankle on May 14, 2012 and sustaining an avulsion fracture of the medial malleolus. He listed findings on examination and placed appellant in a CAM walker. On July 12, 2012 Dr. Bondi noted that there was no change in appellant's condition. He diagnosed a grade 2 ankle strain and fracture. The July 26, 2012 treatment note reflected that appellant sustained an avulsion fracture of the right ankle and reported pain and swelling with instability. Dr. Bondi noted that appellant's medical history had not changed since the prior visit. Appellant underwent a right ankle magnetic resonance imaging (MRI) scan on August 8, 2012 read by Dr. John A. Curtis, a radiologist, who compared the test with a May 16, 2012 x-ray of the right ankle which showed an avulsion fracture of the medial malleolus and irregularity of the navicular bone. The MRI scan demonstrated a small nonfused avulsion fracture of the medial malleolus and a nondisplaced fracture of the middle cuneiform and dorsal aspect of the navicular bone. It also demonstrated a partial tear of the anterior talofibular ligament, calcaneofibular ligament and a tarsal sinus ligament tear.

In a September 11, 2012 report, Dr. Bondi stated that he first evaluated appellant on May 18, 2012 following a May 14, 2012 employment injury that resulted in a medial malleolar fracture of his right ankle. He released appellant to return to work on July 11, 2012 and, on July 19, 2012, appellant experienced severe pain in his right ankle with a tearing sensation while on his postal route. Dr. Bondi reviewed the MRI scan which revealed tears of both the anterior

² Appellant has a prior claim under file number xxxxxx208 for an ankle injury sustained on May 14, 2012. On July 30, 2012 he filed a recurrence of disability under this claim number alleging that on July 19, 2012 he felt a tear and sharp pain in his right ankle while walking to deliver mail.

talofibular and calcaneofibular ligaments. He stated, “It is with a reasonable degree of medical certainty that the aforementioned injuries to the right ankle directly resulted from injuries sustained at work. Further the second injury sustained on July 19, 2012 further aggravated [appellant’s] preexisting condition and lead to his current state of incapacity.” On December 5, 2012 Dr. Bondi diagnosed a fracture to the right ankle on July 19, 2012.

Appellant testified at the February 5, 2012 oral hearing. He described his position as requiring extensive walking with a mailbag averaging 20 pounds. Appellant addressed the May 14, 2012 employment injury to his right ankle, noting that it occurred while delivering mail. He sought treatment at a local emergency room and was initially diagnosed with an ankle strain, but his attending physician obtained x-rays which demonstrated a fracture. Appellant reported continued ankle pain to Dr. Bondi who requested an MRI scan and recommended that appellant return to work with an ankle brace. On July 19, 2012 while performing his regular duties walking on a lawn, appellant experienced a sharp tearing pain in his right ankle. He completed a recurrence of disability claim form as recommended by his supervisor. Thereafter, appellant filed a traumatic injury claim as OWCP assigned him a new claim number. He returned to work in an ankle boot awaiting the MRI scan. Based on the study, Dr. Bondi diagnosed new fractures in appellant’s right foot. Appellant underwent right foot and ankle surgery utilizing his private insurance on October 26, 2012. He returned to full-duty work on January 9, 2013.

By decision dated March 14, 2013, OWCP’s hearing representative affirmed the October 3, 2012 decision. She found that the evidence did not support a specific employment incident on July 19, 2012; rather, appellant had ongoing symptoms from this May 14, 2012 injury.

LEGAL PRECEDENT

OWCP defines 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.”³ In order to determine whether an employee sustained an injury in the performance of duty, OWCP 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 is whether the employee experienced the employment incident which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

A claimant for compensation has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a 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 an 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

³ 20 C.F.R. § 10.5(ee).

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

or her subsequent course of action. An employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁵

The employee must also submit evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶ To be probative, medical rationale should include a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty, and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and specific employment activity or factors identified by the claimant.⁷

ANALYSIS

The record reflects that appellant sustained a right ankle fracture on May 14, 2012, accepted by OWCP under another claim number. He returned to work on July 11, 2012. Thereafter, appellant claimed further injury to his right ankle on July 19, 2012 while on his postal route delivering mail.

The Board finds that the evidence of record supports the employment incident of July 19, 2012. Appellant noted that he initially filed a recurrence of disability under the May 14, 2012 injury but was advised to file a claim for a new traumatic injury on July 19, 2012 which was given a different claim number. Further, the record supports that he was on his postal route at Grandview Avenue delivering mail when he experienced sharp pain in his right ankle. On his notice of recurrence, appellant stated that he was walking on flat ground. During his testimony at the oral hearing, he reported walking on grass. In his September 2012 report, Dr. Bondi listed a history that appellant was walking on a sidewalk. The Board finds that an accurate history of injury is reflected in the record and the minor variations in appellant's footing does not cast doubt on the validity of his claim. Appellant did not provide late notification of injury or lack of confirmation of injury, he did not continue to work without apparent difficulty following the alleged injury and he obtained medical treatment. The Board finds that he has established an incident in the performance of duty on July 19, 2012.

⁵ *D.B.*, 58 ECAB 464, 466-67 (2007).

⁶ *J.Z.*, 58 ECAB 529 (2007).

⁷ *A.D.*, 58 ECAB 149 (2006).

The Board further finds that appellant has submitted sufficient medical evidence to require additional development of his claim.

As noted, appellant sustained an avulsion fracture of his right ankle on May 14, 2012 which was treated by Dr. Bondi. He underwent a right ankle MRI scan on August 8, 2012 which demonstrated a small nonfused avulsion fracture of the medial malleolus and a nondisplaced fracture of the middle cuneiform and dorsal aspect of the navicular bone. The study also demonstrated a partial tear of the anterior talofibular ligament, calcaneofibular ligament, and a tarsal sinus ligament tear. On September 11, 2012 Dr. Bondi described both the May 14 and July 19, 2012 employment incidents. He related that the initial injury resulted in a medial malleolar fracture of the right ankle. Dr. Bondi reviewed the MRI scan and stated that it revealed additional tears of the anterior talofibular and calcaneofibular ligaments as well as additional fractures, when compared to the May 2012 x-rays. He stated to a reasonable degree of medical certainty that the injuries to appellant's right ankle resulted from the injuries sustained at work. Further the second injury of July 19, 2012 aggravated his preexisting right ankle condition.

The reports of Dr. Bondi contain an accurate history of the May 14 and July 19, 2012 incidents at work, a firm medical diagnosis and an opinion that appellant's right ankle condition was exacerbated by the July 19, 2012 employment incident. While the reports are not sufficient to meet appellant's burden of proof, they are sufficient to require further development of the medical evidence.⁸

On remand, OWCP should combine the case records and further develop the medical evidence as to whether the July 19, 2012 employment incident caused or contributed to additional injury to appellant's right ankle that necessitated surgery. After this and such other development as OWCP deems necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds that the July 19, 2012 employment incident occurred as alleged. The Board further finds that the case is not in posture for a decision as development of the medical evidence is required.

⁸ *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2013 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further development consistent with this decision of the Board.

Issued: July 9, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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