United States Department of Labor
Employees' Compensation Appeals Board

E.S., Appellant	)	
and	)	**Docket No. 14-1349**
	)	**Issued: October 16, 2014**
U.S. POSTAL SERVICE, POST OFFICE, West Stockbridge, MA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 16, 2014 appellant timely appealed the April 28, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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's claimed right Achilles tendon rupture is employment related.

FACTUAL HISTORY

On October 11, 2012 appellant, then a 54-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he injured his right ankle and/or Achilles tendon in the performance of duty on September 20, 2012. He stated that he was walking around tubs of mail

[1] 5 U.S.C. §§ 8101-8193 (2006).

on the floor when his ankle snapped from back to front. There was a loud "pop" and a sharp pain. Appellant almost fell, but was able to catch himself. He thought he sprained his right ankle and just stood there for a minute or two. Appellant stated that he then tried to walk it off for another couple of minutes. His foot swelled considerably and the entire back half turned dark purple. Appellant continued to work believing he had only sustained an ankle sprain. After a few weeks when the swelling and discoloration subsided, he noticed his right Achilles tendon appeared to be missing. Appellant then sought treatment in early October 2012.

The employing establishment challenged the claim noting that appellant previously complained of Achilles tendon problems. In an October 15, 2012 statement, the postmaster indicated that appellant had been limping and dragging his right leg for one and a half years, and previously complained on several occasions about being unable to bike or exercise in his free time. She also stated that appellant did not walk around mail tubs on the workroom floor, but walked past them. A witness, Heidi C. Coleman, stated there were no mail tubs in appellant's path and he had not tripped, slipped or fallen.

Appellant stated that he previously suffered from bouts of mild tendinitis, but had not received any specific treatment for this condition for several years. He stated that he had been told that basically everyone who spent as many hours on their feet as he did usually complained of tendinitis from time to time. Appellant's tendons were sore from being on his feet so much, but according to him they had not shown any sign of damage.

Dr. Herbert O. Boté, a Board-certified orthopedic surgeon, examined appellant on October 12, 2012. He noted appellant was injured on September 20, 2012 when he "felt a snap in his Achilles while walking." On physical examination of the right ankle, Dr. Boté noted a defect along the Achilles tendon. A right ankle x-ray revealed no fracture or dislocation. However, there was evidence of a soft tissue defect along the Achilles region. Dr. Boté's assessment was right ruptured Achilles tendon (worsening). He stated there was a high likelihood of a ruptured Achilles tendon, which "likely occurred on [September 20, 2012] while working." Dr. Boté recommended a lower extremity magnetic resonance imaging (MRI) scan. He also discussed tendon reconstructive surgery as the most effective way of preventing further damage to appellant's ankle.

An October 13, 2012 right ankle MRI scan revealed a complete tear of the Achilles tendon.

On October 17, 2012 Dr. Boté surgically repaired appellant's right Achilles tendon.

In a November 14, 2012 attending physician's report (Form CA-20), Dr. Boté identified September 20, 2012 as the date of injury and noted that while walking from one station to another, appellant was going around tubs of mail on the floor when his ankle snapped from front to back. He further noted there was no history of concurrent or preexisting injury. Dr. Boté diagnosed right ankle ruptured Achilles tendon, and responded "yes" to the question of whether the diagnosed condition was caused or aggravated by an employment activity. He did not provide an explanation regarding causal relationship.

In a November 29, 2012 decision, OWCP denied appellant's traumatic injury claim because the medical evidence did not demonstrate a causal relationship between the diagnosed condition and the September 20, 2012 employment incident. It found that appellant's physician had not explained how walking on September 20, 2012 resulted in the diagnosed condition.

Appellant requested reconsideration on February 4, 2013 and submitted a December 26, 2012 report from Dr. Boté.

In his December 26, 2012 "log note," Dr. Boté explained that Achilles tendon ruptures occur with any forceful plantar flexion injury. He further explained that appellant "likely had a forceful plantar flexion event while stepping around the boxes while at work."

By decision dated March 29, 2013, OWCP denied to modify its previous decision finding the medical evidence speculative.

Appellant again requested reconsideration on January 14, 2014 and submitted a December 30, 2013 report from Dr. Boté who noted that appellant presented on October 12, 2012 with right ankle pain and reported having felt a snap in his Achilles while walking across the workroom floor on September 20, 2012. He reviewed the treatment appellant received, including his October 17, 2012 surgery and postop recovery. Appellant reportedly returned to work on February 27, 2013.

Dr. Boté also noted that he previously treated appellant on July 19, 2007 for right ankle pain. The previous examination was essentially negative, and at the time he diagnosed right joint pain, ankle and foot. Dr. Boté advised appellant to follow-up on an as-needed basis. He explained that the condition resolved without further treatment. Dr. Boté further noted that appellant had been performing daily activities until his September 20, 2012 injury. He acknowledged omitting the prior treatment history from his November 14, 2012 attending physician's report (Form CA-20), but explained that he would not consider this prior episode related to appellant's ruptured Achilles tendon. Dr. Boté reiterated his December 26, 2012 statement on causal relationship. In conclusion, he advised it was more likely than not that appellant's ruptured Achilles tendon was the result of his September 20, 2012 work injury.[2]

OWCP, in its April 28, 2014 decision, found that Dr. Boté did not adequately describe the mechanism of injury responsible for appellant's ruptured Achilles tendon and affirmed the denial of the claim.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including

[2] Dr. Boté also referenced treatment notes from January 28 and April 9, 2013 that were reportedly attached to his December 30, 2013 report. However, the record forwarded to the Board did not include the referenced attachments. According to Dr. Boté, he previously noted that appellant's injury occurred while trying to maneuver around a nutting cart/dinghy.

that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[3]

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[4] The second component is whether the employment incident caused a personal injury.[5] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[6]

ANALYSIS

Appellant stated that on September 20, 2012, he was walking around tubs of mail on the workroom floor when his ankle snapped from back to front. He heard a loud "'pop'" and felt a sharp pain. Appellant indicated he almost fell, but was able to catch himself. He initially thought he sprained his right ankle. But when the swelling and discoloration subsided weeks later, appellant noticed a problem with his right Achilles tendon. On October 12, 2012 he saw Dr. Boté for his ongoing right ankle complaints. An MRI scan revealed a complete tear of the right Achilles tendon, which Dr. Boté surgically repaired on October 17, 2012. Appellant reportedly returned to work on February 27, 2013.

Although appellant's surgeon is of the opinion that the diagnosed right Achilles tendon rupture is work related, Dr. Boté failed to adequately explain how the September 20, 2012 employment incident caused the injury. It is unclear from his various medical reports how walking across the workroom floor on September 20, 2012 caused appellant's Achilles tendon to rupture. Dr. Boté's initial October 12, 2012 report noted that appellant's injury "likely occurred on [September 20, 2012] while working." This was not a definitive assessment on causal relationship.[7] Dr. Boté simply reiterated appellant's statement that he "felt a snap in his Achilles while walking." His November 14, 2012 attending physician's report (Form CA-20) also failed to explain how walking around tubs of mail on the floor caused appellant's right ankle injury.

[3] 20 C.F.R. § 10.115(e), (f) (2012); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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

[5] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[6] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[7] A physician's opinion that is either speculative or equivocal is insufficient to establish causal relationship. *E.g.*, *A.D.*, 58 ECAB 149, 157 (2006).

Dr. Boté merely checked the "yes" box on question eight, but the Board has found that insufficient to establish causal connection.[8]

In his December 26, 2012 "log note," Dr. Boté explained that Achilles tendon ruptures occur with any forceful plantar flexion injury. He commented that appellant "likely had a forceful plantar flexion event while stepping around the boxes while at work." Again, this is not a definitive statement on causal relationship, but mere speculation.[9] Moreover, appellant did not elsewhere describe having experienced a "forceful plantar flexion event" on September 20, 2012.

Dr. Boté's latest report is similarly deficient. Although the December 30, 2013 report indicated it was "*more likely than not*" appellant's ruptured Achilles tendon was the result of his September 20, 2012 work injury, Dr. Boté again failed to explain how stepping around boxes or maneuvering around equipment caused appellant's Achilles tendon to rupture.

The medical evidence of record fails to establish a causal relationship between appellant's diagnosed right Achilles tendon rupture and his employment activities on September 20, 2012. Dr. Boté's various reports are not supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the accepted employment exposure. Under the circumstances, OWCP properly denied appellant's traumatic injury claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

Appellant failed to establish that he sustained an injury in the performance of duty on September 20, 2012.

[8] *See D.D.*, 57 ECAB 734, 739 (2006); *Deborah L. Beatty*, 54 ECAB 340, 341 (2003).

[9] *See supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 16, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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