



## ISSUE

The issue is whether appellant has met his burden of proof to establish that his left foot conditions were causally related to the accepted factors of his federal employment.

## FACTUAL HISTORY

On May 31, 2017 appellant, then a 49-year-old customs and border protection officer, filed an occupational disease claim (Form CA-2) alleging that he developed Haglund's deformity, which is a bone spur, in his left heel and foot as a result of his federal employment duties. He reported that his work duties entailed standing, lifting, sitting, and walking which aggravated his heel/foot and caused a limp. Appellant noted that he first became aware of his claimed condition on August 1, 2016 and of its relationship to his federal employment on April 1, 2017. He notified his supervisor of his condition on May 22, 2017 and was assigned light-duty status performing administrative work.

By development letter dated August 22, 2017, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised appellant of the type of medical and factual evidence needed and afforded him 30 days to submit the necessary evidence.

In a September 12, 2017 narrative statement, appellant reported that he sought medical treatment in August 2016 after he developed pain in his left heel. He discussed his airport passenger processing duties, noting that he was assigned to exit duties which entailed sitting and standing for prolonged periods of time to process passengers. Appellant further noted standing for prolonged periods of time while wearing a heavy ballistic vest and holding a rifle. He reported that his employment duties of standing, walking, and sometimes running caused his left foot pain to worsen. Appellant explained that standing for six to eight hours daily for his assignment continued to aggravate his injury. He sought medical treatment and was diagnosed with Haglund's deformity and Achilles tendinitis. On May 15, 2017 appellant's physician provided him a boot to wear and placed him on light duty with restrictions of no standing. Appellant noted that on August 24, 2017 he underwent surgery for his condition and that he had not returned to work.

In support of his claim, appellant submitted medical reports dated August 22, 2016 through September 6, 2017 from Dr. Erroll Bailey, a Board-certified orthopedic surgeon. Dr. Bailey reported that appellant complained of left posterior heel pain. He noted that appellant used to work as a police officer and currently worked security at the Atlanta airport. Dr. Bailey reported that appellant did a lot of standing and walking which he had done all of his life. He provided physical examination findings and reviewed diagnostic testing. Dr. Bailey diagnosed left Haglund's deformity, insertional Achilles spur, and Achilles tendinosis. He reported that appellant underwent conservative treatment, but his condition had not improved. In August 2017, appellant underwent left Haglund's deformity excision and Achilles tendon repair. In a September 14, 2017 report, Dr. Bailey stated that appellant was status post excision surgery.

By decision dated November 7, 2017, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that his diagnosed conditions were causally related to the accepted factors of his federal employment.

On December 4, 2017 appellant requested a review of the written record by an OWCP hearing representative.

In support of his request, appellant submitted a November 30, 2017 report from Dr. Mitchell S. Nudelman, Board-certified in family medicine. Dr. Nudelman opined that appellant's left Haglund's deformity and Achilles tendinitis most likely developed due to prolonged standing at work while wearing a vest and carrying a rifle. He explained that while appellant may have had an anatomic propensity to develop such conditions, work aggravated and exacerbated the diagnosed conditions. Dr. Nudelman noted that surgery was performed following conservative treatment and appellant was expected to make a complete recovery. The report was cosigned by Dr. Bailey.

By decision dated March 2, 2018, an OWCP hearing representative affirmed the November 7, 2017 decision finding that the evidence of record failed to establish that appellant's diagnosed conditions of left Haglund's deformity and Achilles tendinitis were causally related to the accepted factors of his federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish 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 FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

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.<sup>5</sup>

To establish causal relationship between the condition, as well as any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.<sup>6</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.

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<sup>3</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>4</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>6</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>7</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his left foot conditions were causally related to the accepted factors of his federal employment.<sup>8</sup>

In support of his claim, appellant submitted medical reports dated August 22, 2016 through September 6, 2017 from Dr. Bailey, his treating physician. The Board finds that the reports of Dr. Bailey are insufficient to establish appellant's occupational disease claim.<sup>9</sup> While Dr. Bailey noted a firm medical diagnosis of left Haglund's deformity and Achilles tendinitis, he failed to provide an opinion on the cause of appellant's injury.<sup>10</sup> Rather, he only generally noted that appellant engaged in prolonged standing and walking. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value.<sup>11</sup> As Dr. Bailey failed to provide an opinion that appellant's left Haglund's deformity and Achilles tendinitis were caused by his federal employment duties, his reports are insufficient to meet appellant's burden of proof.<sup>12</sup>

Dr. Nudelman's November 30, 2017 report also fails to establish appellant's alleged employment injury.<sup>13</sup> He did not discuss appellant's medical history, physical examination findings, or provide review of diagnostic testing. Dr. Nudelman's report lacks the specificity and detail needed to establish that appellant's injuries are a result of a work-related occupational exposure.<sup>14</sup>

Dr. Nudelman opined that appellant's left Haglund's deformity and Achilles tendinitis most likely developed due to prolonged standing at work while wearing a vest and carrying a rifle. The Board notes that Dr. Nudelman's opinion on causation is highly speculative and couched in equivocal terms as he failed to provide a definitive statement pertaining to the cause of appellant's injury. To be of probative value, a physician's opinion on causal relationship should be one of

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<sup>7</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>8</sup> *See Robert Broome*, 55 ECAB 339 (2004).

<sup>9</sup> *J.I.*, Docket No. 18-0286 (issued September 17, 2018).

<sup>10</sup> *D.H.*, Docket No. 11-1739 (issued April 18, 2012).

<sup>11</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</sup> *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

<sup>13</sup> *See L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

<sup>14</sup> *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

reasonable medical certainty.<sup>15</sup> The physician noted that while appellant may have had an anatomic propensity to develop such conditions, work aggravated and exacerbated the diagnosed conditions. It remains unclear whether appellant's left foot condition was the result of a preexisting condition or caused by his occupational employment duties. A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.<sup>16</sup> Given these deficiencies, the Board finds Dr. Nudelman's report lacks convincing quality and is of limited probative value.<sup>17</sup>

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.<sup>18</sup> The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relationship.<sup>19</sup>

The Board finds that the medical evidence of record is insufficient to establish causal relationship between appellant's federal employment duties as a customs and border protection officer and his diagnosed left foot Haglund's deformity and Achilles tendinitis.<sup>20</sup>

Appellant may submit additional evidence, together 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**

The Board finds that appellant has not met his burden of proof to establish that his left foot conditions are causally related to the accepted factors of his federal employment.

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<sup>15</sup> See *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>16</sup> *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>17</sup> *Supra* note 7.

<sup>18</sup> *D.D.*, 57 ECAB 734 (2006).

<sup>19</sup> *Daniel O. Vasquez*, 57 ECAB 559 (2006).

<sup>20</sup> *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 2, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2019  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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