United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 22-0043**
	)	**Issued: April 25, 2022**
DEPARTMENT OF VETERANS AFFAIRS, GREATER LOS ANGELES HEALTHCARE SYSTEM, Los Angeles, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On October 4, 2021 appellant timely filed for review of an April 9, 2021 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed foot condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On September 9, 2020 appellant, then a 54-year-old nursing assistant, filed an occupational disease claim (Form CA-2) alleging that he developed torn tendons in both feet as a result of

[1] 5 U.S.C. § 8101 *et seq*.

transferring heavy patients from a chair to the bed or gurney and turning them for cleaning while in the performance of duty. He noted that he became aware of his condition on June 1, 2001 and realized that it was caused or aggravated by his federal employment on February 18, 2020.[2] Appellant did not stop work. Appellant's supervisor noted on the claim form that appellant had been detailed to light duty.

In support of his claim, appellant submitted a February 18, 2020 progress note signed by Dr. Lina Salty, a Board-certified internist. Dr. Salty noted that appellant could work with permanent restrictions of no carrying more than 30 pounds and no engaging in stooping/bending activity. She advised that his existing condition was aggravated by his work. Dr. Salty concluded that appellant was permanently moderately disabled due to his incapacitating injury or disease.

In an August 20, 2020 form report, Alma Magana, a family nurse practitioner, noted that appellant had chronic insomnia and sleep apnea with delayed sleep phase. In a request for medical documentation of even date, she requested that he be provided reasonable accommodations of: no pushing gurneys; no lifting more than 30 pounds; no stooping or bending; and no standing more than two hours. Ms. Magana also noted it was not recommended that appellant perform fast paced work due to diagnosis of short segment longitudinal split tear of the peroneus brevis tendon below the lateral malleolus, and chronic back pain.

Appellant also submitted his written confirmation of request for accommodation dated August 26, 2020 and reassignment notices issued by the employing establishment on January 16 and February 18, 2020.

In an August 26, 2020 letter, the employing establishment indicated that appellant was receiving service-connected disability compensation and that he was 90 percent disabled.

OWCP, in a September 30, 2020 development letter, informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received a copy of Dr. Salty's previously submitted February 18, 2020 progress note.

By decision dated December 15, 2020, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted factors of his federal employment.

On January 12, 2021 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated April 9, 2021, the hearing representative affirmed the December 15, 2020 decision.

[2] Appellant also noted that he was a 90 percent service-connected disabled veteran.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 timely filed within the applicable time limitation period of FECA,[4] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is 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 upon a traumatic injury or an occupational disease.[6]

OWCP's regulations define the term "occupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift."[7] To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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 identified employment factors.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] 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.[10]

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[3] *Id*.

[4] *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] 20 C.F.R. § 10.5(ee).

[8] *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[9] *L.F.*, Docket No. 19-1905 (issued April 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a bilateral foot condition causally related to the accepted factors of his federal employment.

In a February 18, 2020 progress note, Dr. Salty found that appellant had an incapacitating injury or disease aggravated by his work, resulting in permanent moderate disability. She noted however, that he could work with permanent restrictions. While Dr. Salty offered an opinion on causal relationship, she did not provide a firm medical diagnosis as she only related an "incapacitating injury or disease"[11] Further, she did not explain how physiologically the accepted employment factors caused a diagnosed condition.[12] For these reasons, the Board finds that this evidence is insufficient to establish appellant's burden of proof.

The note from Ms. Magana, a family nurse practitioner, does not constitute competent medical evidence because nurse practitioners are not considered physicians as defined under FECA.[13] Consequently, their medical findings and/or opinions are of no probative value and will not suffice for purposes of establishing entitlement to compensation benefits.[14]

As the record does not contain rationalized medical opinion evidence sufficient to establish a diagnosed foot condition causally related to the accepted factors of appellant's federal employment, the Board finds that appellant has not met his burden of proof.

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

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

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[11] *See A.K.*, Docket No. 20-0003 (issued June 2, 2020); *M.M.*, Docket No. 19-0972 (issued November 18, 2019); *See J.S.*, Docket No. 18-0726 (issued November 5, 2018).

[12] *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *M.L.*, Docket No. 19-0813 (issued November 26, 2019); *see B.R.*, Docket No. 17-0294 (issued May 11, 2018).

[13] Section 8101(2) provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law, 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also B.H.*, Docket No. 20-0268 (issued August 11, 2021) (nurse practitioners are not considered physicians under FECA).

[14] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board