

**United States Department of Labor  
Employees' Compensation Appeals Board**

M.W., Appellant	)	
	)	
and	)	Docket No. 23-0687
	)	Issued: August 29, 2023
U.S. POSTAL SERVICE, WASHINGTON MAIN	)	
POST OFFICE, Washington, DC, 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  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 12, 2023 appellant filed a timely appeal from a January 12, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 has met his burden of proof to establish a left lower extremity condition causally related to the accepted May 24, 2022 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On May 25, 2022 appellant, then a 51-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 24, 2022 he injured his left ankle due to a “high step” while in the performance of duty.<sup>2</sup> He stopped work on the date of injury.

In support of his claim, appellant submitted preoperative clearance forms dated June 14, 2022, which indicated that he was scheduled to undergo left triple arthrodesis, Achilles tendon lengthening, and tibial bone graft.

In a development letter dated July 25, 2022, OWCP advised appellant of the deficiencies of his claim. It informed him of the type of factual and medical evidence necessary to establish his claim and provided a development questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary information.

OWCP thereafter received a June 14, 2022 medical report by Dr. Paul S. Cooper, a Board-certified orthopedic surgeon, who noted that appellant related complaints of left ankle pain, which he attributed to an injury at work. Dr. Cooper performed a physical examination, which was negative for edema, tenderness, ligament instability, and loss of sensation. He recommended surgery and a pulsed electromagnetic field (PEMF) therapy device.

In a June 14, 2022 report of x-rays of the left foot, Dr. Allison Lax, a Board-certified diagnostic radiologist, noted pes planus deformity and extensive osseous proliferation at the syndesmosis, medial aspect of the ankle, and calcaneonavicular articulation. She indicated that prior x-rays of the right knee dated June 21, 2019 and right foot dated April 20, 2022 revealed similar extensive ossification. Dr. Lax noted that the focal findings in the left foot on the June 14, 2022 study “could be on the basis of prior trauma, immobilization, or metabolic disease.”

In a July 15, 2022 letter, Dr. Cooper opined that the PEMF therapy device was medically reasonable and necessary to treat appellant’s left ankle conditions.

In an August 3, 2022 operative report, Dr. Cooper noted that he performed a triple arthrodesis with lateral column lengthening wedge, Achilles tendon lengthening, and large volume proximal tibial bone graft with bone marrow aspiration. He diagnosed severe stage IV flatfoot on the left.

In an August 17, 2022 follow-up report, Dr. Cooper noted that appellant related complaints of throbbing pain in the left foot. On physical examination, his sutures were intact with no signs of infection. Dr. Cooper applied a short leg cast and recommended that appellant follow up in six weeks.

In a September 7, 2022 narrative report, Dr. Cooper noted that appellant had sustained a work-related injury on May 25, 2022. He outlined his evaluations, treatment plan, and the x-ray

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<sup>2</sup> Appellant previously filed a Form CA-1 for an August 27, 2001 left ankle injury, to which OWCP assigned OWCP File No. xxxxxx797. It designated the August 27, 2001 claim as a short form closure. OWCP has not administratively combined OWCP File No. xxxxxx797 with the current claim.

findings and recommended that appellant remain out of work. Dr. Cooper opined that “the work-related injury accelerated flat foot and posterior tibial tendon.”

By decision dated September 13, 2022, OWCP denied appellant’s traumatic injury claim, finding that he had not submitted sufficient evidence to establish that the events occurred, as alleged. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

On October 17, 2022 appellant requested reconsideration of OWCP’s September 13, 2022 decision.

OWCP thereafter received appellant’s August 17, 2022 response to its development questionnaire, which indicated that, while on his route, he stepped down, misjudged a curb, and his foot slipped and twisted. Appellant further noted that he caught himself on his truck and “walked it off.” He related that the injury caused swelling and soreness. Appellant thereafter rested and elevated his left foot as much as possible while he waited for his appointment with Dr. Cooper.

A September 30, 2022 report of x-rays of the left foot revealed postsurgical changes status post triple arthrodesis of the hindfoot/midfoot.

In a follow-up report dated September 30, 2022, Dr. Cooper noted appellant’s physical examination and x-rays findings. He removed the cast and provided a walker boot for the next six weeks. Dr. Cooper anticipated that appellant would thereafter require an ankle brace for an additional six weeks.

By decision dated January 12, 2023, OWCP modified the September 13, 2022 decision to find that appellant had established an incident in the performance of duty on May 24, 2022 as alleged. However, the claim remained denied as the medical evidence of record was insufficient to establish that his diagnosed conditions were causally related to the accepted May 24, 2022 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,<sup>4</sup> 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

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.<sup>5</sup> 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.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury which can be established only by medical evidence.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background. 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 the specific employment incident.<sup>9</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left lower extremity condition causally related to the accepted May 24, 2022 employment incident.

Dr. Cooper, in his narrative report dated September 7, 2022, opined that "the work-related injury accelerated flat foot and posterior tibial tendon." However, he did not explain a pathophysiological process of how the accepted May 24, 2022 employment incident caused or

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<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>9</sup> *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

contributed to appellant's condition.<sup>11</sup> The Board has held that a medical opinion that does not offer a medically sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions is of limited probative value.<sup>12</sup> Furthermore, Dr. Cooper does not provide medical rationale differentiating between the effects of the work-related injury and preexisting conditions.<sup>13</sup> As noted above, the Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.<sup>14</sup> For these reasons, Dr. Cooper's September 7, 2022 report is insufficient to establish appellant's burden of proof.

In medical reports dated June 14 through September 30, 2022, Dr. Cooper noted that appellant related a history of a work injury and diagnosed severe stage IV flatfoot. He did not, however, offer an opinion as to whether the diagnosed condition was causally related to the accepted employment incident. 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 on the issue of causal relationship.<sup>15</sup> Therefore, these additional reports of Dr. Cooper are also insufficient to establish appellant's claim.

The remaining evidence of record consisted of reports of x-rays of the left foot. As the Board has held, diagnostic studies, standing alone, lack probative value, and are insufficient to establish the claim.<sup>16</sup> Consequently, this additional evidence is insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a left lower extremity condition causally related to the accepted May 24, 2022 employment incident, 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.

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<sup>11</sup> *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *J.C.*, Docket No. 18-1474 (issued March 20, 2019); *M.M.*, Docket No. 15-0607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

<sup>12</sup> *J.B.*, Docket No. 21-0011 (issued April 20, 2021); *A.M.*, Docket No. 19-1394 (issued February 23, 2021).

<sup>13</sup> *See, e.g., J.G.*, Docket No. 20-0009 (issued September 28, 2020); *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *J.B.*, Docket No. 17-1870 (issued April 11, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *P.O.*, Docket No. 14-1675 (issued December 3, 2015).

<sup>14</sup> *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>15</sup> *See S.S.*, Docket No. 21-0837 (issued November 23, 2021); *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *L.D.*, Docket No. 20-0894 (issued January 26, 2021); *T.F.*, Docket No. 18-0447 (issued February 5, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>16</sup> *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a left extremity condition causally related to the accepted May 24, 2022 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 12, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 29, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board