

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted October 3, 2022 employment incident.

FACTUAL HISTORY

On October 11, 2022 appellant, then a 45-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on October 3, 2022 he sustained injuries to his left leg, ankles, and left toes when the forklift he was driving jerked and threw him against a wall resulting in his left leg getting stuck, while in the performance of duty. He stopped work on October 3, 2022.

An after-visit summary dated October 3, 2022 included diagnoses of left foot laceration and bone contusion. Appellant was seen on this visit by Drs. Molly Andersen, an osteopath Board-certified in emergency medicine, and Jonathan Knisley, an emergency medicine specialist. A work excuse letter dated October 3, 2022, bearing an illegible signature, indicated that appellant could return to work on October 10, 2022.

A December 2, 2022 computerized tomography (CT) scan of appellant's left ankle noted findings of a left ankle bimalleolar fracture.

Appellant submitted physical therapy notes dated from December 22, 2022 through February 13, 2023.

In a development letter dated January 30, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical and factual evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

On February 13, 2023 appellant replied to OWCP's development letter. He described the incident of October 3, 2022, stating that when he backed up while driving the forklift on that date, it jerked and threw him off. Appellant was thrown against a wall and his left leg became stuck. The forklift pressed against him, smashing his left leg, while the handlebar hit him in the chest. Appellant was stuck for more than six minutes until help arrived. He stated that he suffered a cut on the toes of both feet, left leg pain, pain and a mark on his chest, and elbow discomfort.

In a note dated February 17, 2023, Dr. Kevin Chen, a Board-certified orthopedic surgeon, stated that appellant could return to light-duty work with restrictions of no pushing, pulling, or lifting over five pounds with his arms.

By decision dated March 3, 2023, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted October 3, 2023 employment incident. It concluded, therefore, that the requirements have not been met to establish an injury as defined by FECA.

OWCP continued to receive medical evidence. In a report dated February 17, 2023, Dr. Chen recounted appellant's history of injury that on October 3, 2022, he was injured at work when a forklift backed up against him and he used his arms to push on it to avoid further injury. He noted appellant's physical examination findings of the elbows and diagnosed lateral epicondylitis.

In a progress reports dated March 31 and April 11, 2023, Emily Yaniz, a physician assistant, noted that appellant was seen for unspecified lateral epicondylitis of the elbow. She recounted appellant's continued complaints of elbow weakness.

In a duty status report (Form CA-17) dated May 8, 2023, Dr. Ari Kaz, a Board-certified orthopedic surgeon, recommended physical restrictions, including seated work only. In a narrative report dated May 8, 2023, Dr. Kaz noted that appellant had sustained a left ankle injury at work in October 2022. X-rays demonstrated a healed fibula fracture with degenerative changes noted in the tibiotalar articulation. Dr. Kaz diagnosed post-traumatic osteoarthritis of the left ankle and a history of bimalleolar fracture of the left ankle.

In a note dated May 12, 2023, Dr. Chen stated that appellant should remain off work until further clearance. A follow-up appointment was scheduled for June 16, 2023. A Form CA-17 from Dr. Kaz dated June 12, 2023 extended appellant's work restriction of seated work only.

In a report dated May 12, 2023, Dr. Chen followed up with appellant for his bilateral elbow complaints. Appellant told Dr. Chen that approximately one month prior, he began to experience intermittent numbness of the right index finger. On physical examination, Dr. Chen observed tenderness to palpation distal to the lateral condyle and numbness of the right index finger that was exacerbated upon a Tinel's test. He diagnosed hand numbness and lateral epicondylitis.

In a report dated June 12, 2023, Dr. Kaz followed up with appellant for left ankle arthritis, noting that appellant had received an ankle injection five weeks prior. He diagnosed left ankle post-traumatic osteoarthritis, a history of bimalleolar fracture, and left posterior tibial tendinitis. Dr. Kaz advised that appellant should continue with seated work only.

On June 16, 2023 Dr. Chen followed up with appellant for bilateral elbow pain. Appellant told him that two weeks prior, he also began to experience left elbow medial-sided pain without new injury or trauma. On physical examination Dr. Chen related appellant's physical examination findings and diagnosed lateral epicondylitis and hand numbness. He opined that appellant's bilateral epicondylitis was work related. Dr. Chen completed a form report of the same date reiterating appellant's diagnoses and opining that appellant was unable to return to work.

On July 24, 2023 Dr. Kaz followed up with appellant for his left ankle condition. He noted that approximately three months prior, he had performed a steroid injection of the ankle joint, which greatly helped appellant's pain. Appellant told Dr. Kaz that the pain along the medial aspect of his ankle along the posterior tibial tendon had resolved, with no pain on normal ambulation while wearing orthotics. Dr. Kaz related appellant's physical examination findings and diagnosed exacerbation of left ankle arthritis. He recommended work restrictions of lifting no more than 20 pounds.

On July 28, 2023 Dr. Chen followed up with appellant, who told him that his right hand numbness had improved. He diagnosed medial epicondylitis of the left elbow and bilateral lateral epicondylitis of the elbows. In a note of the same date, Dr. Chen recommended that appellant remain off work until further clearance.

In a report dated August 21, 2023, Dr. Kaz followed up with appellant for his left ankle condition. On physical examination, he made the same observations as in his July 24, 2023 report. Dr. Kaz diagnosed exacerbation of preexisting left ankle arthritis, opining that it was due to a workplace injury. He recommended a functional capacity evaluation (FCE) to determine if

permanent work restrictions were needed for his position at the employing establishment, noting that appellant was able to work as a bus driver without restrictions.

On August 25, 2023, appellant, through counsel, requested reconsideration of OWCP's March 3, 2023 decision.

OWCP continued to receive medical evidence. In a report dated December 2, 2022, Dr. Alexander Crespo, a Board-certified orthopedic surgeon, examined appellant for evaluation of the left ankle. Appellant told Dr. Crespo that on October 3, 2022 a tractor at work malfunctioned and pinned his left leg. He noted that he broke his left ankle while skiing in 2006, which was treated without surgery, and continued to cause intermittent ankle pains. Appellant stated that since October 3, 2022, his ankle pain had become more chronic. Dr. Crespo related appellant's physical examination findings. He diagnosed a healed left ankle fracture, now with tibiotalar arthritis. Dr. Crespo opined that appellant's development of tibiotalar arthritis was likely due to his bimalleolar ankle fracture from 2006, which had been exacerbated due to the October 3, 2022 incident. An x-ray of the left ankle obtained on the same date revealed a healed bimalleolar ankle fracture with chronic medial clear space widening and tibiotalar arthrosis.

In a note dated March 31, 2023, Dr. Chen recommended that appellant could return to light duty at that time with restrictions of no pushing, pulling, or lifting more than five pounds with the bilateral arms. On April 14, 2023 he recommended that appellant remain off work from April 11 through May 12, 2023. In a note dated May 12, 2023, Dr. Kaz related that appellant could return to light duty.

On April 11, 2023 Dr. Chen followed up with appellant for his upper extremity conditions. Appellant told Dr. Chen that after he returned to work, he experienced pain in the elbows, forearms, and right hand. Dr. Chen conducted a physical examination and diagnosed lateral epicondylitis. He recommended that appellant stay off work.

In notes dated May 12 and June 16, 2023, Dr. Chen related that appellant should remain off work.

In a Form CA-17 dated August 21, 2023, Dr. Kaz diagnosed pain over appellant's left posterior tibial tendon. He recommended work restrictions of no lifting, carrying, standing, walking, climbing, or operating machinery; no more than one hour per day of reaching above the shoulder; and casing duties only.

In a report dated September 12, 2023, Dr. Chen followed up with appellant for his bilateral elbow conditions. He again related appellant's physical examination findings and diagnosed medial epicondylitis of the left elbow and bilateral lateral epicondylitis of the elbows. In a note of even date, Dr. Chen related that appellant should remain off work.

In a follow-up report dated October 24, 2023, Dr. Chen noted that appellant told him that one month prior that he began experiencing numbness to the back of his left ring finger and swelling on the back of his left long finger. Appellant's physical examination findings were documented. Dr. Chen diagnosed bilateral lateral epicondylitis and left medial epicondylitis. In a note of the same date, he stated that appellant was incapacitated due to the incident of October 3, 2022 and recommended that he remain off work until further clearance.

In a Form CA-17 dated November 1, 2023, Dr. Kaz diagnosed pain over the left posterior tibial tendon and recommended permanent restrictions of no lifting, carrying, standing, walking, climbing, or operating machinery; no more than one hour per day reaching above the shoulder intermittently; and casing duties only.

By decision dated November 24, 2023, OWCP modified its prior decision to find that appellant had submitted sufficient evidence to establish a medical diagnosis in connection with the accepted October 3, 2022 incident; however, the claim remained denied as appellant had not submitted sufficient evidence to establish causal relationship between his diagnosed conditions and the accepted October 3, 2022 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

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 whether the employee actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused an injury.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the

⁴ *Id.*

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.¹⁰

In a 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.¹¹

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a left foot laceration causally related to the accepted October 3, 2022 employment incident.

An after-visit summary dated October 3, 2022 included diagnoses of left foot laceration and bone contusion. OWCP's procedures provide that, if a condition reported is a minor one, such as a burn, laceration, insect sting, or animal bite, which can be identified on visual inspection by a lay person, a case may be accepted without a medical report.¹² The diagnosis of left foot laceration was consistent with appellant's physical examination and the mechanism of injury. As the evidence of record establishes that the accepted October 3, 2022 employment incident resulted in a visible injury, the Board finds that appellant has met his burden of proof to establish a left foot laceration casually related to the accepted October 3, 2022 employment incident.¹³ The case will, therefore, be remanded to OWCP for payment of medical expenses for appellant's left foot laceration and any attendant disability.¹⁴

The Board further finds that appellant has not met his burden of proof to establish additional medical conditions as causally related to the accepted October 3, 2022 employment injury.

In support of his claim, appellant submitted reports from Drs. Crespo, Chen, and Kaz. On December 2, 2022 Dr. Crespo diagnosed a healed left ankle fracture, now with tibiotalar arthritis. He opined that appellant's development of tibiotalar arthritis was likely due to his bimalleolar ankle fracture from 2006, which had been exacerbated due to the October 3, 2022 injury. On June 16, 2023 Dr. Chen diagnosed lateral epicondylitis and hand numbness. He opined that appellant's bilateral epicondylitis was work related. On August 21, 2023 Dr. Kaz diagnosed exacerbation of preexisting left ankle arthritis, opining that it was due to a workplace injury. While

¹⁰ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *see also L.S.*, Docket No. 18-0518 (issued February 19, 2020).

¹² Federal (FECA) Procedure Manual, *id.* at Chapter 2.805.3c (May 2023). *See also C.S.*, Docket No. 21-0560 (issued July 13, 2023).

¹³ *See S.B.*, Docket No. 22-0221 (issued March 14, 2024); *K.C.*, Docket No. 22-0788 (issued August 23, 2023) (the Board accepted a visible injury of left knee contusion as causally related to the accepted employment incident); *N.B.*, Docket No. 20-0794 (issued July 29, 2022) (the Board accepted a visible injury of right shoulder contusion as causally related to the accepted employment incident); *B.W.*, Docket No. 22-0134 (issued May 24, 2022) (the Board accepted a visible injury of lower back/buttocks contusion as causally related to the accepted employment incident).

¹⁴ *See A.J.*, Docket No. 20-0484 (issued September 2, 2020).

these reports included opinions from physicians as to the cause of appellant's diagnosed conditions, the Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to the accepted employment incident.¹⁵ As such, the above-noted reports of Drs. Crespo, Chen, and Kaz are of limited probative value and are insufficient to establish expansion of the claim.

Appellant also submitted medical reports, notes, and CA-17 forms from Drs. Andersen, Knisley, Chen, and Kaz dated from October 3, 2022 through October 24, 2023. However, these physicians did not include opinions as to the cause of appellant's diagnosed conditions. 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.¹⁶ This evidence is therefore insufficient to establish expansion of the claim.

A CT scan of appellant's left ankle, as well as an x-ray of his left ankle were submitted to the record. The Board has held that diagnostic test reports, standing alone, lack probative value as they do not provide an opinion on causal relationship between the employment injury and an additional diagnosed condition.¹⁷

Appellant also submitted reports from physical therapists dated from December 22, 2022 through February 13, 2023, as well as reports signed solely by a physician assistant dated March 31 and April 11, 2023. However, the Board has held that medical reports signed by a nurse, a physical therapist, or a physician assistant are of no probative value, because these medical providers are not considered physicians as defined under FECA.¹⁸

As appellant has not submitted rationalized medical evidence establishing an additional medical condition as causally related to the accepted October 3, 2022 employment injury, the Board finds that he 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.

¹⁵ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

¹⁶ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); see *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁷ *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

¹⁸ Section 8101(2) provides that a 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, *supra* note 11 at Chapter 2.805.3a(1) (January 2013); *A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA); *M.J.*, Docket No. 19-1287 (issued January 13, 2020) (physician assistants are not considered physicians as defined under FECA); *T.K.*, Docket No. 19-0055 (issued May 2, 2019) (nurses are not considered physicians as defined under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA).

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a left foot laceration causally related to the accepted October 3, 2022 employment incident. The Board further finds that appellant has not met his burden of proof to establish additional conditions as causally related to the accepted October 3, 2022 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2023 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part.

Issued: April 26, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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