

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

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C.K., Appellant )

and )

U.S. POSTAL SERVICE, DETROIT POST )  
OFFICE, Detroit, MI, Employer )

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**Docket No. 24-0196  
Issued: April 16, 2024**

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 14, 2023 appellant filed a timely appeal from an October 6, 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 medical diagnosis in connection with the accepted March 23, 2023 employment incident.

**FACTUAL HISTORY**

On May 11, 2023 appellant, then a 56-year-old parcel post distribution machine operator, filed a traumatic injury claim (Form CA-1) alleging that on March 23, 2023 he sustained a right leg injury while in the performance of duty. He explained that he was pulling out a box and cut

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

his lower leg on a pallet. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. Appellant stopped work on May 9, 2023.

On May 9, 2023 appellant was seen by Dr. Andrew Mastay, a Board-certified podiatrist. He was placed on restricted duty until May 23, 2023. A subsequent medical note dated May 10, 2023, with an illegible signature from the same clinic indicated that appellant was previously seen for wound care starting April 25, 2023 for a right leg venous insufficiency. The note indicated that he was off work for two weeks.

On May 31, 2023 OWCP received a work status report (Form CA-3) indicating that appellant stopped work on May 9, 2023 and returned to work on May 23, 2023 at full duty.

In a development letter dated June 16, 2023, OWCP informed appellant of the deficiencies in his claim. It advised him of the type of additional factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond.

OWCP received additional medical evidence. In a report dated May 30, 2023, Dr. Anna Martin, a podiatrist, indicated that appellant related that he injured his right leg at work in February 2023. Appellant further related that cellulitis developed around the wound. Dr. Martin assessed (1) venous stasis ulcer of right ankle, and (2) venous insufficiency. Appellant also underwent a debridement procedure.

In a subsequent development letter dated July 17, 2023, OWCP indicated that it performed an interim review of appellant's case file and found that the evidence remained insufficient to support his claim. It further reminded him that he was afforded 60 days from the June 16, 2023 development letter to respond.

By decision dated August 18, 2023, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 27, 2023 appellant requested reconsideration. In support of his request, he submitted additional medical evidence.

A report dated December 14, 2022 related that appellant was seen by Dr. Zeinab Nasser, a resident internal medicine physician. Dr. Nasser related polyuria, polydipsia, and vision changes over the last month. He diagnosed type 2 diabetes and hypertension. On December 28, 2022 appellant was seen for a follow-up with Dr. David Willens, a Board-certified internist, who changed appellant's diagnosis to type 1 diabetes.

On March 3, 2023 appellant was seen again by Dr. Nasser. Dr. Nasser related that appellant injured his leg at work "a few weeks ago" and sustained an ulcer. He further reported that, after the wound turned into a scab, appellant scraped it with an instrument at work a week and a half prior and it had been painful since then. Appellant was diagnosed with wound of lower right extremity.

On April 4, 2023 appellant returned for a follow-up with Dr. Lester Kobylak, a Board-certified internist. Dr. Kobylak related that appellant had injured his leg at work a few weeks ago and developed an ulcer. Appellant then scraped the scab on February 25, 2023 at work, and that the wound had not healed since his last visit. Swelling and expanding erythema not found in the previous visit was noted.

On May 31, 2023 appellant was treated by Dr. Kimberly Baker-Genaw, a Board-certified internist, where she related a history of a right leg injury at work in February 2023. Appellant related that the treatment was not working and was given antibiotics by a wound clinic based on wound cultures that were collected. He also related that he underwent debridement on May 30, 2023.

On June 19, 2023 appellant was treated by Dr. Vanessa Robinson, a Board-certified internist. He recounted a February 2023 history of injury. Appellant indicated continued pain and swelling now in his left foot.

By decision dated October 6, 2023, OWCP denied modification of its August 18, 2023 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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, 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.<sup>3</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>4</sup>

To determine whether an employee sustained a traumatic injury in the performance of duty, it must first 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 that allegedly occurred at the time and place, and in the manner alleged. The second component is whether the employment incident caused an injury.<sup>5</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>4</sup> *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>5</sup> *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined).

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>6</sup> 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 nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.<sup>7</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical diagnosis in connection with the accepted March 23, 2023 employment incident.

On December 14 and 28, 2022 appellant was seen by Dr. Nasser and Dr. Willens. These notes related a diagnosis of diabetes and hypertension. On March 3, 2023 appellant was seen again by Dr. Nasser and diagnosed with wound of lower right extremity and ulcer. As these notes predate the alleged date of injury, they are insufficient to establish a medical diagnosis in connection with the accepted employment incident.<sup>8</sup> This evidence, therefore, is insufficient to establish the claim.

Dr. Kobylak also diagnosed an ulcer in his report dated April 4, 2023. On May 30, 2023 Dr. Martin assessed venous stasis ulcer of right ankle and venous insufficiency. Appellant was subsequently seen for follow-up by Dr. Mastay, Dr. Baker-Genaw, and Dr. Robinson on May 9 and 31 and June 19, 2023, respectively. While these reports included medical diagnoses, they referred to incident dates predating the alleged date of injury.<sup>9</sup> This evidence is therefore insufficient to establish the claim.

Further, a medical note dated May 10, 2023, with an illegible signature, indicated that appellant was previously seen starting April 25, 2023 for a right leg injury. The note indicated that he was off work for two weeks. However, the Board has held that medical evidence containing an illegible signature, or which is unsigned, has no probative value, as it is not established that the author is a physician.<sup>10</sup> This note is, therefore, insufficient to establish appellant's claim.

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<sup>6</sup> *C.H.*, Docket No. 20-1212 (issued February 12, 2021); *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).

<sup>7</sup> *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *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).

<sup>8</sup> *B.P.*, Docket No. 21-0872 (issued December 8, 2021).

<sup>9</sup> *Id.*

<sup>10</sup> *G.D.*, Docket No. 22-0555 (issued November 18, 2022); *see T.C.*, Docket No. 21-1123 (issued April 5, 2022); *Z.G.*, Docket No. 19-0967 (issued October 21, 2019); *see R.M.*, 59 ECAB 690 (2008); *Merton J. Sills*, 39 ECAB 572, 575 (1988); *Bradford L. Sullivan*, 33 ECAB 1568 (1982).

As the medical evidence of record is insufficient to establish a medical diagnosis in connection with the accepted March 23, 2023 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.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a medical diagnosis in connection with the accepted March 23, 2023 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 6, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2024  
Washington, DC

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

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

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