

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

J.O., Appellant)	
)	
and)	Docket No. 24-0740
)	Issued: August 28, 2024
U.S. POSTAL SERVICE, CITYGATE POST)	
OFFICE, Columbus, OH, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 2, 2024 appellant filed a timely appeal from a February 15, 2024 merit decision and April 2, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on November 26, 2022 as alleged; and (2) whether OWCP

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 8, 2022 appellant, then a 63-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on November 26, 2022 he sustained a full-thickness tear of the left Achilles tendon with severe underlying tendinosis and extensive edema in the posterior calcaneus when he stood in his work area for a prolonged time without a proper floormat while in the performance of duty. On the reverse side of the claim form, C.J., his supervisor acknowledged that appellant had been injured in the performance of duty, but noted that he had submitted medical evidence attributing the injury to diabetes, a preexisting condition. Appellant stopped work on November 26, 2022.

Thereafter, OWCP received a November 30, 2022 duty status report (Form CA-17) by Dr. Mena Shafiek, a podiatrist, wherein he noted an “[a]nkle and foot injury due to [d]iabetes.” Dr. Shafiek observed clinical findings of posterior leg pain with possible Achilles tendon rupture. He diagnosed Achilles rupture. Dr. Shafiek returned appellant to sedentary duty “due to concern for [A]chilles tendon rupture pending [magnetic resonance imaging (MRI)] confirmation.”

In a December 8, 2022 letter, the employing establishment acknowledged appellant's contention that he sustained a left Achilles tendon injury due to “standing for a long period of time without a floor mat.” The employing establishment controverted the claim as the November 30, 2022 Form CA-17 attributed the claimed injury to nonoccupational diabetes.

In a development letter dated December 9, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical evidence necessary and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested evidence.

Thereafter, OWCP received a November 30, 2022 incomplete imaging study with an impression of “[f]ull-thickness tear and retraction of the distal Achilles tendon with severe underlying tendinosis and extensive edema/stress reaction in the posterior calcaneus,” edema-like signal most consistent with low-grade osseous stress reaction in the proximal third through fifth metatarsals, mild plantar fasciitis at the central cord origin, and nonspecific edema in the abductor digiti minimi and abductor hallucis muscles.

In a December 7, 2022 report, Dr. Shafiek held appellant off work due to a left Achilles tendon rupture. He restricted appellant from weight bearing on the left lower extremity for six months. Dr. Shafiek noted that appellant would soon undergo surgery.

In a December 16, 2022 attending physicians report (Form CA-20), Dr. Shafiek recounted a history of injury of “chronic posterior leg pain due to demanding nature of [appellant's] job.” He answered a question “[n]o” to indicate that appellant had no history or evidence of concurrent or preexisting injury or impairment and noted “chronic [A]chilles tendinosis.” On examination, Dr. Shafiek found Achilles tendon rupture with retraction, and diagnosed Achilles tendon rupture. He checked a box marked “Yes” indicating that the condition found was caused or aggravated by

the employment activity described, noting that the “physical deman[d]s of occupation lead to degeneration and rupture of [A]chilles.” Dr. Shafiek held appellant off work for the period December 6, 2022 through May 30, 2023 pending surgery scheduled for December 29, 2022.

By decision dated January 9, 2023, OWCP accepted that the November 26, 2022 employment incident occurred as alleged. However, it denied appellant’s traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical condition and the accepted November 26, 2022 employment incident.

On January 9, 2024 appellant requested reconsideration.

Thereafter, OWCP received a December 30, 2023 MRI scan of the left ankle, which revealed interval postoperative changes of Achilles tendon repair with flexor hallucis longus tendon transfer, 9.7 cm in length moderate grade interstitial tear of the tendon repair, and surrounding soft tissue edema.

In a January 4, 2024 report, Dr. Louis L. Bowman, an osteopathic physician specializing in emergency medicine, recounted that on November 26, 2022 while at work, appellant injured his left ankle when, near the end of his scheduled shift, he agreed to work two hours of overtime on a sorting machine processing letters. After the end of the overtime shift, when walking across the warehouse floor to the locker room, he felt a “pop” in his left ankle with the onset of severe pain, rapid swelling, and weakness. Approximately one week later, appellant consulted a specialist who diagnosed a left Achilles tendon rupture. On examination of the left ankle, Dr. Bowman observed a post-surgical scar on the back side of the left Achilles tendon, moderate spasm and pain on palpation, ankle flexor and extensor weakness at 3/5, active trigger points in the ankle and calf musculature, limited left ankle motion in all planes, and a positive left drawer sign. He diagnosed spontaneous rupture of other tendons of the left ankle and foot, Achilles tendinitis of the left leg, and other specified injury of the left Achilles tendon. Dr. Bowman opined that appellant’s left Achilles tendon rupture did happen while working his shift on November 26, 2022 and was caused by the physical demands of years of walking, bending, stooping, lifting packages of all sizes and weight on a hard concrete surface, weakening the Achilles tendon to the point it ruptured during his shift causing a large tear on November 26, 2022. He noted that the physical demands of “constant walking, standing, stooping, bending, and lifting” while working as an operations clerk during the previous eight years, in addition to his age of 65 years, caused and contributed to the November 26, 2022 left Achilles tendon rupture. When appellant lifted his left ankle to take a step, “the Achilles tendon snapped and ruptured.” He related that appellant underwent surgical repair of the Achilles tendon rupture on January 20, 2023 and returned to full-duty work in April 2023. Dr. Bowman also noted that appellant sustained a second Achilles tendon injury on December 4, 2023 when he bent down to lift a package while at work. He returned appellant to limited-duty work.

By decision dated February 15, 2024, OWCP affirmed the January 9, 2023 decision as modified, finding that appellant had not established fact of injury. It found that Dr. Bowman’s account of appellant feeling a “pop” in his left ankle while walking at work on November 26, 2022 created doubt as to whether the accepted November 26, 2022 employment incident occurred as alleged. OWCP further found that Dr. Bowman’s attribution of the left Achilles tendon rupture to

repeated walking, standing, and lifting over a period of years implicated an occupational condition rather than a traumatic injury.

On March 28, 2024 appellant requested reconsideration. He submitted a complete copy of the November 30, 2022 left ankle MRI scan. OWCP also received copies of the December 30, 2023 MRI scan and Dr. Bowman's January 4, 2024 report previously of record.

By decision dated April 2, 2024, OWCP denied reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ 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 of FECA,⁴ 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.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

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.⁷ Generally, fact of injury consists of two components that must be considered in conjunction with one another. 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.⁸ The second component is whether the employment incident caused an injury.⁹

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and

³ *Supra* note 1.

⁴ *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

⁸ *J.V.*, Docket No. 21-0029 (issued April 15, 2022); *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁹ *Id.*

circumstances and his or her subsequent course of action.¹⁰ In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.¹¹ An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹²

ANALYSIS -- ISSUE 1

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on November 26, 2022, as alleged.

As noted, an employee's statement alleging that an injury occurred at a given time, place, and in the manner alleged is of great probative value, and will stand unless refuted by strong or persuasive evidence.¹³ Appellant alleged in his December 8, 2002 Form CA-1 that he sustained a left Achilles tendon tear while in the performance of duty on November 26, 2022, due to prolonged standing at work without a floor mat. On the reverse side of the Form CA-1, the employing establishment acknowledged that appellant was in the performance of duty when injured. Additionally, the employing establishment, in its December 8, 2022 controversion statement, did not dispute that on November 26, 2022, appellant had stood for a prolonged period without a floor mat. Rather, it contended that in a Form CA-17 signed by Dr. Shafiek on November 30, 2022, appellant attributed his condition to nonoccupational diabetes and not the identified employment incident.

OWCP, in its January 9, 2023 decision, accepted that the November 26, 2022 employment incident occurred, as alleged. However, in its February 15, 2024 decision, OWCP denied fact of injury, finding that Dr. Bowman's January 4, 2024 account of appellant feeling a "pop" in his left ankle on November 26, 2022, and his opinion that standing, walking, and lifting at work over a period of years contributed to degeneration of the Achilles tendon, created doubt as to whether the accepted November 26, 2022 employment incident occurred as alleged. While Dr. Bowman opined that walking, bending, stooping, and lifting over a period of years had weakened the Achilles tendon until it ruptured during appellant's shift on November 26, 2022, he emphasized that appellant's left Achilles tendon rupture "did happen while working his shift on November 26, 2022[.]"

¹⁰ *C.J.*, Docket No. 23-0997 (issued January 17, 2024); *S.W.*, Docket No. 17-0261 (issued May 24, 2017).

¹¹ *J.F.*, Docket No. 23-0492 (issued November 8, 2023); *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *Betty J. Smith*, 54 ECAB 174 (2002).

¹² *L.B.*, Docket No. 24-0325 (issued May 8, 2024); *D.F.*, *id.*; *see also M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹³ *T.V.*, Docket No. 22-0968 (issued October 23, 2023); *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *see also M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

Although appellant advised Dr. Shafiek on the Form CA-17 that his injury was due to his nonemployment-related diabetes, appellant subsequently provided Dr. Shafiek and Dr. Bowman with a more in-depth description of his claimed employment injury, consistent with the information appellant included on his claim form. Both Dr. Shafiek and Dr. Bowman in turn explicitly recounted appellant's description of the alleged November 26, 2022 employment injury, to which they attributed appellant's condition. The Board thus finds that Dr. Shafiek's December 16, 2022 report and Dr. Bowman's January 4, 2024 report do not cast serious doubt that the November 26, 2022 employment incident occurred, as alleged. Therefore, appellant has met his burden of proof to establish the employment incident occurred in the performance of duty on November 26, 2022, as alleged.¹⁴

As appellant has established that an incident occurred in the performance of duty on November 26, 2022 as alleged, the question becomes whether the incident caused an injury.¹⁵ Since OWCP found that he had not established fact of injury, it neither properly evaluated Dr. Shafiek's December 16, 2022 report, nor Dr. Bowman's January 4, 2024 report. The case must, therefore, be remanded for full consideration of the medical evidence of record.¹⁶ After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish an injury causally related to the accepted November 26, 2022 employment incident.¹⁷

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that a traumatic incident occurred in the performance of duty on November 26, 2022, as alleged.

¹⁴ *E.L.*, Docket No. 24-0341 (issued May 10, 2024); *T.V.*, *id.*

¹⁵ *E.L.*, *id.*; *D.F.*, *supra* note 13; *M.A.*, Docket No. 19-0616 (issued April 10, 2020).

¹⁶ *D.F.*, *id.*; *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

¹⁷ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the February 15, 2024 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 28, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board