

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

J.D., Appellant)

and)

U.S. POSTAL SERVICE, U.S. POSTAL)
INSPECTION SERVICE, New York, NY,)
Employer)
-----)

Docket No. 25-0007
Issued: December 5, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 3, 2024 appellant filed a timely appeal from May 2 and October 1, 2024 merit decisions 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

ISSUE

The issue is whether appellant has met his burden of proof to establish right ankle and/or right knee conditions causally related to the accepted September 9, 2022 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). Appellant asserted that he wanted an opportunity to present his side as he disagreed with OWCP's decisions. The Board, in exercising its discretion, denies appellant's request for oral argument as the case can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On September 9, 2022 appellant, then a 56-year-old postal police officer, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his right ankle and right knee when he slipped as he was descending stairs while in the performance of duty.⁴ He did not stop work.

In a September 27, 2022 note, Dr. Michael A. Gott, a Board-certified orthopedic surgeon, diagnosed right knee and ankle injuries and opined that appellant was totally disabled. Right knee x-rays of even date were normal.

Nicole Shelly, a physician assistant, also examined appellant on September 27, 2022.

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

In notes dated December 1, 2022, Dr. Gott examined appellant due to right knee and right ankle pain. He related that appellant needed to remain out of work until he obtained a magnetic resonance imaging (MRI) scan due to the right knee injury sustained at work.

On December 1, 2022 Dr. Areeb A. Chator, a physiatrist, examined appellant due to right knee and right ankle pain. He related that appellant had fallen and rolled his ankle in September 2022 descending stairs. Dr. Chator recounted appellant's history of knee surgery following bilateral femur fractures 25 years earlier and his current symptoms of right knee collapse causing falls and limited range of motion. He diagnosed posterior tibial tendinitis and prescribed a right knee MRI scan.

By decision dated January 5, 2023, OWCP found that the September 9, 2022 incident had occurred as alleged, but denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition from a qualifying physician due to the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive medical evidence. In reports dated January 10 and 13, 2023, Dr. Gott related that he examined appellant on December 1, 2022 and diagnosed complex tear of medial meniscus of the right knee.

³ *Order Remanding Case*, Docket No. 23-1199 (issued February 20, 2024).

⁴ OWCP assigned the present claim OWCP File No. xxxxxx898. Appellant has a previously accepted November 12, 1999 traumatic injury claim accepted by OWCP for bilateral femur fractures with bilateral open reduction and internal fixations under OWCP File No. xxxxxx779. He subsequently filed another traumatic injury claim on September 11, 2003, which was accepted by OWCP for internal derangement of the right knee under OWCP File No. xxxxxx114.

On January 16, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The oral hearing took place on July 13, 2023.

By decision dated September 22, 2023, OWCP's hearing representative modified the January 5, 2023 decision to find that appellant had established a medical diagnosis of right posterior tibial tendinitis in connection with the accepted employment incident. However, the hearing representative affirmed the denial of the claim as causal relationship was not established.

On September 28, 2023 appellant appealed to the Board. By order dated February 20, 2024, the Board set aside the September 22, 2023 decision and directed OWCP to administratively combine OWCP File Nos. xxxxxx898; xxxxxx114 and xxxxxx779 followed by a *de novo* decision.⁵ On remand OWCP administratively combined the files on April 22, 2024, 2022 with OWCP File No. xxxxxx779 designated as the master file.

OWCP continued to receive medical evidence. In a February 8, 2024 report, Dr. Gott diagnosed peroneal tendinitis right ankle and right knee tendinitis with resolutions of the symptoms following physical therapy. He found that appellant could return to full-duty work.

By *de novo* decision dated May 2, 2024, OWCP denied appellant's traumatic injury claim finding that the evidence was insufficient to establish that he sustained a medical condition causally related to the accepted September 9, 2022 employment incident.

On September 25, 2024 appellant requested reconsideration of the May 2, 2024 decision. In a May 7, 2024 report, Dr. Eli Dayon, an osteopath specializing in internal medicine, diagnosed right knee and ankle tendinitis following a fall at work on September 9, 2022 leading to injury. He explained that it was not within a high degree of medical certainty that appellant's right knee fall and injury caused his symptomatology. Dr. Dayon related that the accepted employment incident could have caused a right knee contusion and right ankle tendinitis. He concluded that there was a causal relationship between the knee injury at work and his knee symptoms.

By decision dated October 1, 2024, OWCP denied modification of its May 2, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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

⁵ *Supra* note 3.

⁶ *Supra* note 1.

employment injury.⁷ 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.⁸

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.⁹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.¹¹ 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 accepted employment incident.¹² Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹³

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish right ankle and/or right knee conditions causally related to the accepted September 9, 2022 employment incident.

Dr. Dayon, in a May 7, 2024 report, recounted appellant's fall at work on September 9, 2022 but opined that it was not within a high degree of medical certainty that his right knee injury caused his symptomatology. He further related that the accepted employment incident could have caused a right knee contusion and right ankle tendinitis and then concluded that there was a causal relationship between the knee injury at work and his knee symptoms. Accordingly,

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

⁸ *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).

⁹ *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).

¹⁰ *R.P.*, Docket No. 21-1189 (issued July 29, 2022); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *S.W.*, Docket No. 24-0302 (issued July 26, 2024); *R.P., id.*; *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹² *Id.*

¹³ *S.W., supra* note 11; *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

Dr. Dayon provided an inconsistent and contradictory report which is of diminished probative value and cannot constitute competent medical evidence.¹⁴

In notes dated September 27 and December 1, 2022, January 10 and 13, 2023, and February 8, 2024, Dr. Gott, diagnosed right knee and ankle conditions and intermittently held appellant off work. However, he did not provide an opinion on causation. Likewise, on December 1, 2022, Dr. Chator examined appellant due to right knee and ankle pain and related that he had fallen in September 2022 descending stairs and had rolled his ankle. While he referenced the accepted employment incident, he did not address causal relationship. 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. Therefore, this evidence is insufficient to establish the claim.¹⁵

Appellant also submitted a report from a physician assistant. Certain healthcare providers such as physician assistants are not considered physicians as defined under FECA.¹⁶ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. Consequently, this report, therefore, does not establish entitlement to FECA benefits.

OWCP additionally received diagnostic testing reports. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused the diagnosed conditions.¹⁷ Consequently, this evidence is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed right ankle and right knee conditions and the accepted September 9, 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.

¹⁴ *J.F.*, Docket No. 20-1604 (issued July 8, 2021); *H.S.*, Docket No. 20-0939 (issued February 12, 2012).

¹⁵ *See S.T.*, Docket No. 22-1025 (issued January 3, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ 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) (May 2023); *see also M.F.*, Docket No. 19-1573 (issued March 16, 2020) (medical reports signed solely by a physician assistant or a nurse practitioner are of no probative value as these care providers are not considered physicians as defined under FECA); *A.C.*, Docket No. 24-0661 (issued September 11, 2024) (medical reports signed solely by a nurse, physician assistant, or physical therapist are of no probative value, as such healthcare providers are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion); *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).

¹⁷ *W.L.*, Docket No. 20-1589 (issued August 26, 2021); *A.P.*, Docket No. 18-1690 (issued December 12, 2019).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish right ankle and/or right knee conditions causally related to the accepted September 9, 2022 employment incident.

ORDER

IT IS HEREBY ORDERED THAT May 2 and October 1, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 5, 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