

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

C.C., Appellant)

and)

U.S. POSTAL SERVICE, ALOHA POST)
OFFICE, Beaverton, OR, Employer)

**Docket No. 24-0454
Issued: June 6, 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
JANICE B. ASKIN, Judge

JURISDICTION

On March 25, 2024 appellant filed a timely appeal from a January 29, 2024 merit 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

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical diagnosis in connection with the accepted October 26, 2023 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 29, 2024 decision, OWCP received additional evidence. 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.*

FACTUAL HISTORY

On November 3, 2023 appellant, then a 27-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 26, 2023 he sustained a right foot injury while in the performance of duty. He explained that he “heard a sound” when walking up stairs to make a delivery and that it subsequently became difficult to put weight on his right foot. 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 October 27, 2023.

A work status note, dated October 27, 2023, signed by Kim Hensley, a certified physician assistant, noted that appellant was seen for a work-related right ankle injury and held him off work through November 3, 2023.

A subsequent work status note dated November 1, 2023, with an illegible signature held appellant off work through November 30, 2023.

Appellant further submitted an undated medical note from Sandra Letim, a family nurse practitioner. Ms. Letim indicated her review of appellant’s right ankle x-ray revealed no sign of fracture or dislocation, but did show a bone island in the heel.

In a development letter dated November 22, 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. A Form CA-20 was also provided. OWCP afforded appellant 60 days to respond.

On December 4, 2023 OWCP received a work status report (Form CA-3) indicating that appellant stopped work on October 27, 2023 and returned to work on December 2, 2023 at full duty.

In a follow-up letter dated December 15, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the November 22, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record. No additional evidence was received.

By decision dated January 29, 2024, 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.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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

³ *Id.*

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.⁴ 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.⁵

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 a personal injury and can be established only by medical evidence.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.⁸ 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.⁹ 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 the accepted employment incident is sufficient to establish causal relationship.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical diagnosis in connection with the accepted October 26, 2023 employment incident.

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *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).

⁶ *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); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁷ *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).

⁸ *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).

⁹ *Id.*

¹⁰ *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).

Appellant submitted a work status note dated October 27, 2023 signed Ms. Hensley, a physician assistant, who held appellant off work through November 3, 2023. He further submitted an undated note from Ms. Letim, a family nurse practitioner, who indicated no sign of fracture or dislocation, but did note a heel bone island based on review of an x-ray report. However, the Board has held that certain healthcare providers such as nurse practitioners and physician assistants are not considered physicians as defined under FECA.¹¹ These notes are of no probative value and are, therefore, insufficient to establish the claim.

OWCP also received a work status note dated November 1, 2023 with an illegible signature. 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.¹² This note is, therefore, insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a medical diagnosis in connection with the accepted October 26, 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 October 26, 2023 employment incident.

¹¹ Section 8101(2) of FECA 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) (January 2013); *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); *see also A.B.*, Docket No. 23-0827 (issued December 27, 2023) (nurse practitioners are not considered physicians as defined under FECA); *A.F.*, Docket No. 22-1135 (issued January 5, 2023) (physician assistants are not considered physicians as defined under FECA).

¹² *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).

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board