

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

_____)		
J.M., Appellant)		
)		
and)		Docket No. 24-0933
)		Issued: October 23, 2024
DEPARTMENT OF VETERANS AFFAIRS,)		
TOMAH VA MEDICAL CENTER, Tomah, WI,)		
Employer)		
_____)		

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 23, 2024 appellant filed a timely appeal from April 4 and June 7, 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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the June 7, 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.*

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish entitlement to continuation of pay (COP); and (2) whether appellant has met his burden of proof to establish a left foot condition causally related to the accepted January 31, 2024 employment incident.

FACTUAL HISTORY

On March 4, 2024 appellant, then a 52-year-old custodial worker, filed a traumatic injury claim (Form CA-1) alleging that on January 31, 2024, he sustained a strained tendon in the left ankle when removing equipment while in the performance of duty.

In a development letter dated April 4, 2024, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

By decision dated April 4, 2024, OWCP denied appellant's claim for COP, finding that he had not reported his January 31, 2024 injury on an OWCP-approved form within 30 days of the date of injury.

In a follow-up development letter dated April 25, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the April 4, 2024 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.

In a February 7, 2024 report, Dr. Patrick J. Hardiman, a podiatrist, diagnosed post-traumatic left foot collapsing "*pes valgo planus*" and provided work restrictions.

A February 8, 2024 x-ray read by Dr. James J. Vesely, Board-certified in diagnostic radiology, revealed no acute fracture, *pes planus*, mild first metatarsophalangeal (MTP) joint degenerative change, and small calcaneal spur.

In a letter dated April 22, 2024, the employing establishment offered appellant a light-duty assignment effective April 23, 2024. Appellant accepted the light-duty assignment on April 23, 2024.

In a June 5, 2024 e-mail, K.K., a human resources specialist with the employing establishment, controverted the claim due to lack of medical evidence, and the absence of a statement from appellant describing the equipment he was moving at the time of the alleged injury.

In a memorandum of telephone call (Form CA-110) dated June 5, 2024, OWCP confirmed that appellant was moving housekeeping equipment which included a unit of dispensers, paper towels, toilet paper, sharps, containers, biohazards, *etc.*, that caused pressure to his foot. It noted that fact of injury was established, but medical evidence was needed to support causal relationship between the injury and a diagnosed medical condition.

By decision dated June 7, 2024, OWCP denied appellant's traumatic injury claim, finding that the medical evidence was insufficient to establish causal relationship between a diagnosed medical condition and the accepted January 31, 2024 employment incident.

LEGAL PRECEDENT -- ISSUE 1

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of FECA.³ This latter section provides that written notice of injury shall be given within 30 days.⁴ The context of section 8122 makes clear that this means within 30 days of the date of injury.⁵

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish entitlement to COP.

The record reflects that appellant filed a Form CA-1 on March 4, 2024, alleging that on January 31, 2024 he sustained a strained tendon in the left ankle while removing equipment. As appellant filed his Form CA-1 on March 4, 2024, more than 30 days after the January 31, 2024 date of injury, the Board finds that appellant did not file his claim for COP within 30 days of the date of injury.

The Board, therefore, finds that OWCP properly denied COP as appellant did not file his claim within the requisite 30 days from the date of injury.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA⁷ 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

³ *Supra* note 1 at § 8118(a).

⁴ *Id.* at § 8122(a)(2).

⁵ *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

⁶ 20 C.F.R. § 10.205(a)(1-3); *see also T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

⁷ *Supra* note 1.

limitation of FECA,⁸ 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.⁹ 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.¹⁰

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.¹¹

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.¹² 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.¹³

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish a left foot condition causally related to the accepted January 31, 2024 employment incident.

In a February 7, 2024 report, Dr. Hardiman diagnosed post-traumatic left foot collapsing “*pes valgo planus*” and provided restrictions for work. He did not, however, provide any opinion regarding causation. 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.¹⁴ Therefore, this evidence is insufficient to establish the claim.

The record also contains a February 8, 2024 x-ray. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship, as they do not

⁸ See *Y.S.*, Docket No. 22-1142 (issued May 11, 2023); *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).

⁹ *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).

¹⁰ *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).

¹¹ *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹² *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).

¹³ *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).

¹⁴ 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).

provide an opinion as to whether the accepted employment incident caused a diagnosed condition.¹⁵ Consequently, this evidence is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a left foot condition causally related to the accepted January 31, 2024 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 entitlement to COP. The Board further finds that he has not met his burden of proof to establish a left foot condition causally related to the accepted January 31, 2024 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 4 and June 7, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 23, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy 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

¹⁵ *W.L.*, Docket No. 20-1589 (issued August 26, 2021); *A.P.*, Docket No. 18-1690 (issued December 12, 2019).