

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

_____)
D.M., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
JAMES A. HALEY VA MEDICAL CENTER,)
Tampa, FL, Employer)
_____)

Docket No. 24-0813
Issued: September 18, 2024

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
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 August 6, 2024 appellant, through counsel, filed a timely appeal from a July 22, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant met his burden of proof to establish a medical condition causally related to the April 30, 2022 employment incident.

FACTUAL HISTORY

On May 3, 2022 appellant, then a 58-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on April 30, 2022, he injured his right foot when walking down metal stairs outside in the rain while in the performance of duty. He related that his right foot slid on the last stair, his foot buckled and fractured. Appellant stopped work that same day. On the reverse side of the form the employing establishment acknowledged that he was injured in the performance of duty.

OWCP received April 30, 2022 discharge instructions which provided information related to ankle fractures and ankle dislocations.

An April 30, 2022 x-ray report of appellant's right ankle revealed acute displaced trimalleolar fractures of the right ankle, associated posterior and lateral subluxation of the talus with disruption of ankle mortise, and no fractures or malalignment of the right foot.

On May 25, 2022 Dr. Monic J. Amin, an orthopedic surgeon, advised that appellant was not to bear weight on the right lower extremity and was to remain off work for 45 days.

In a June 13, 2022 progress note, Dr. Thomas K. Stoops, an orthopedic surgeon, noted that an incision from surgery was well healed, his ankle fracture was healing with plates and screws in good alignment without evidence of loosening, and the fracture was near anatomical alignment. Dr. Stoops also noted chronic degenerative changes of the anterior ankle joint with chronic and medial mal avulsion fracture. He indicated that appellant should continue to use his boot for at least two weeks, and then begin weight bearing with the boot.

A July 11, 2022 treatment note from Dr. John T. Wilson, an orthopedic surgeon, noted that appellant was given information regarding physical therapy and was attempting to weight bear as tolerated. He also noted that appellant was not cleared for full duty as a police officer as he was still undergoing healing of his fracture and rehabilitation.

On October 12, 2022 Dr. Michael P. Kucharik, an orthopedic surgeon, advised that appellant was encouraged to continue with physical therapy.

January 9 and 11, 2023 notes from individuals with illegible signatures indicated that appellant was able to work light duty with no running or jumping.

In a January 18, 2023 development letter, OWCP informed appellant that when his claim was first received, it appeared to be a minor injury that resulted in minimal or no lost time from work and it was reopened for consideration of the merits because a claim for wage loss had been received. It advised him of the deficiencies of his claim and requested additional medical evidence. OWCP afforded appellant 30 days to respond.

By decision dated February 23, 2023, OWCP denied appellant's traumatic injury claim, finding that the medical evidence was insufficient to establish causal relationship between a diagnosed condition and the April 30, 2022 employment incident.

On March 15, 2023 appellant requested reconsideration.

OWCP received an unsigned March 6, 2023 progress report which noted a diagnosis of right ankle post-traumatic osteoarthritis.

In a June 8, 2023 decision, OWCP affirmed as modified the February 23, 2023 decision. It found that the evidence was insufficient to establish that the injury or medical condition arose in the performance of duty.

On April 26, 2024 appellant, through counsel, requested reconsideration and submitted additional evidence.

In an undated report received on April 26, 2024, Dr. Conrad Stoy, an orthopedic surgeon, noted that due to the extensive nature of appellant's injury, it was medically necessary to keep him off work and refer him to physical therapy. He explained that appellant was given work limitations to allow his injury to heal and was returned to light duty as soon as he was medically able.

By decision dated April 30, 2024, OWCP modified the June 8, 2023 decision to find that the incident occurred in the performance of duty, as alleged; however, the claim remained denied as the medical evidence of record was insufficient to establish a causal relationship between a diagnosed condition and the accepted employment incident.

On July 15, 2024 appellant, through counsel, requested reconsideration and submitted additional evidence.

OWCP received VA medical records dated April 30 to May 2, 2022 related to appellant's procedure on May 2, 2022 for reduction of his displaced fracture of the distal fibula.

By decision dated July 22, 2024, OWCP denied modification of its April 30, 2024 decision.

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 States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁴ 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

³ *Supra* note 2.

⁴ *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).

employment injury.⁵ 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.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. 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 a personal injury.⁷

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.⁸ 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.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his right foot condition was causally related to the accepted April 30, 2022 employment incident.

In support of his claim, appellant submitted several medical reports which provided diagnoses including a May 25, 2022 treatment note from Dr. Amin; a June 13, 2022 progress note from Dr. Stoops; a July 11, 2022 treatment note from Dr. Wilson; an October 12, 2022 treatment note from Dr. Kucharik; an undated report from Dr. Stoy; and VA medical records related to appellant's May 2, 2022 surgical procedure. The Board notes that none of the medical reports contained a medical opinion on causal relationship.¹⁰ 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.¹¹ Therefore, this evidence is insufficient to establish the claim.

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *Supra* note 9.

¹¹ *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).

OWCP also received unsigned April 30, 2022 discharge notes, January 9 and 11, 2023 notes from a provider with an illegible signature, and an unsigned March 6, 2023 report. However, the Board has long held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence because the author cannot be identified as a physician.¹² Therefore these reports are insufficient to establish the claim.

OWCP also received an April 30, 2022 diagnostic x-ray report; however, the Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.¹³ Consequently, this evidence is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted April 30, 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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the April 30, 2022 employment incident.

¹² *L.B.*, Docket No. 21-0353 (issued May 23, 2022); *T.D.*, Docket No. 20-0835 (issued February 2, 2021); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹³ *W.L.*, Docket No. 20-1589 (issued August 26, 2021); *A.P.*, Docket No. 18-1690 (issued December 12, 2019).

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 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