

foot while playing racquetball at the base gym as part of a mandatory fitness program. He stopped work on April 20, 2010. The employing establishment controverted appellant's claim alleging that nobody had seen the incident and that the medical evidence did not establish that his alleged condition was related to his employment. It explained that several days prior to the alleged event appellant called in sick due to gout.

On May 24, 2010 OWCP advised appellant that the evidence submitted was insufficient to support his claim and requested additional information. It requested he submit additional medical evidence providing a diagnosis of any condition resulting from the alleged April 16, 2010 incident and a physician's opinion regarding how the incident caused or aggravated his alleged conditions.

In a May 26, 2010 work excuse note, Dr. Carolinda Helu, a podiatrist, stated that appellant received medical treatment for gout and stress fracture and was unable to perform normal work activities.

In a June 13, 2010 statement, James E. Jeffers Jr., a firefighter, stated that on April 16, 2010 he was on duty when the engine and ambulance crews went to the base gym. He observed that while playing racquetball appellant was in pain. Appellant notified Captain Tim Scherer, a supervisor, that he was going to fill out a CA-1 form. After a few minutes, however, he stated that he would not file a CA-1 form because he thought his condition would improve on its own. The following day, appellant continued to complain of discomfort in his foot.

In a signed June 15, 2010 statement, appellant noted that he did not sustain any other injuries, either on or off duty, between the date of the injury and the date he reported it. He was never clinically tested for gout but in July 2009 he received a steroid shot for it.

In a decision dated June 25, 2010, OWCP denied appellant's traumatic injury claim on the grounds that the medical evidence was insufficient to establish a diagnosed medical condition causally related to the April 16, 2010 employment incident. It accepted that the April 16, 2010 incident occurred as alleged, but determined that appellant failed to provide sufficient evidence establishing that he sustained any diagnosed medical condition causally related to the accepted event.

On July 1, 2010 appellant, through his representative, requested an oral hearing, which was held on October 14, 2010. He stated that his job had a mandatory physical fitness program, which most of the firefighters followed by going to the base physical fitness center from 2:30 to 4:00 p.m. to play sports or lift weights. On April 16, 2010 appellant played racquetball with the other men on his fire crew and began to experience pain in his right foot. He explained that he was probably running towards a wall and stopped suddenly, which made his foot support all his weight. Appellant tried to walk off the pain but when it continued to hurt, he suggested to his supervisor that he complete a CA-1 form. He changed his mind, however, because he thought it was just a minor sprain that would later improve as it did in the past. When the pain continued, appellant decided to go to the hospital three days later. He also stated that he had gout attacks in the past, but was never diagnosed.

Appellant's representative stated that Dr. Paul Knight a Board-certified diagnostic radiologist, provided a diagnosis in his report and that Dr. Richard N. Sauer, a Board-certified neurologist, had also diagnosed foot entrapment neuropathy. He further pointed out that Dr. Helu indicated that appellant's injury was causally connected to his work. The hearing representative stated that Dr. Sauer reported that appellant may have foot entrapment neuropathy, which was not a positive diagnosis. He acknowledged that appellant had gout, but stated that none of the medical records adequately explained how the April 16, 2010 incident may have aggravated appellant's gout. The hearing representative also pointed out that none of the medical reports contained a definite medical diagnosis and a physician's opinion explaining how the injury happened. He advised appellant and his representative to provide a medical report that addressed the description of the history of gout, history of any prior right foot injuries and a description of how the injury occurred on April 16, 2010.

In an April 19, 2010 emergency room note, Dr. Stuart B. Campbell, Board-certified in emergency and internal medicine, noted appellant's complaints of gout and of right foot pain after he played racquetball on Saturday. He did not recall a specific injury or trauma. The pain progressed over into his great toe and over the talofibular area of the right lateral ankle. Dr. Campbell reviewed appellant's medical history and noted a history of gout. Upon examination, he observed minimal swelling near appellant's right lateral ankle with tenderness over the talofibular ligament. Appellant's heel was intact and nontender with no bruising and his distal foot and metatarsals were normal to examination. Dr. Campbell opined that appellant suffered from acute right ankle pain secondary to possible gout or mild ankle sprain.

In an April 27, 2010 letter, Dr. Rina J. Missirian, a Board-certified internist, stated that she treated appellant for an acute gout attack and excused him from work for the period April 25 to 26, 2010.

In a May 7, 2010 diagnostic report, Dr. Jeffrey Behar, a Board-certified diagnostic radiologist, noted gout but no definite soft tissue swelling, laceration or radiopaque foreign body. He also found no evidence of soft tissue calcifications, cortical erosion or joint space narrowing and degenerative changes. Dr. Behar stated that this was a negative examination of the right foot.

In a May 12, 2010 computerized tomography (CT) scan report, Dr. Knight did not find any evidence of fracture, dislocation, destructive osseous lesion or irregularity of the articular surfaces. He observed mild degenerative changes involving the subtalar joint manifested as subcortical sclerosis and marginal osteophytes. Dr. Knight stated that the scan was an unremarkable CT scan of the foot with evidence of mild degenerative arthropathy of the subtalar joint.

In a July 6, 2010 report, Dr. Sauer stated that appellant complained of foot pain since April 16, 2010 and had a history of gout. Upon examination, he observed symmetrical strength and bulk and a normal cerebellar examination. Appellant's great toe showed mild warmth and mild swelling. Dr. Sauer opined that appellant may have a foot entrapment neuropathy and had

some degree of gout. He recommended a right lower extremity electromyography (EMG) examination.²

On November 17, 2010 the employing establishment responded to appellant's statements during the oral hearing. It stated that appellant has not been able to describe a specific incident that caused his alleged injury and pointed out that he recalled a "fast stop" only when prompted by his representative. The employing establishment also noted that the medical evidence did not contain a positive diagnosis that appellant suffered anything more than an acute case of gout.

By decision dated December 15, 2010, an OWCP hearing representative affirmed the June 25, 2010 denial decision finding insufficient medical evidence establishing that he sustained a foot condition causally related to the April 16, 2010 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence⁴ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁵

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.⁶ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁷ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁸ An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.⁹

² Appellant also submitted various prescription slips and a letter from the Department of Veterans Affairs which stated that he received disability compensation for a service-connected disability evaluated at 10 percent disabling.

³ 5 U.S.C. §§ 8101-8193.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

⁶ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁷ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁸ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.¹⁰ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident.¹¹ 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 the specific employment factors identified by the employee.¹²

FECA provides that, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.¹³ When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.¹⁴

ANALYSIS

Appellant alleges that on April 16, 2010 he sustained a strained joint and a gouty arthritis attack in his right foot while playing racquetball at work. During the October 14, 2010 hearing before the Branch of Hearings and Review, he testified that his injury occurred as a result of a fast stop, when he stopped suddenly all of his weight was placed on the foot. By decisions dated June 25 and December 15, 2010, OWCP accepted that the April 16, 2010 incident occurred as alleged in the performance of duty, but denied his claim finding insufficient medical evidence to establish that he sustained a diagnosed condition as a result of the incident. The Board finds that appellant failed to provide sufficient medical evidence establishing that he sustained a right foot injury as a result of the April 16, 2010 work incident.

To be of probative value, medical reports must first be based upon a proper factual history, which includes a description of the accepted event. None of the medical reports of record noted a history of injury that included a description of a fast stop, while playing racquetball. Dr. Campbell noted in his April 19, 2010 note that appellant had played racquetball on Saturday, but he also indicated that appellant did not recall any specific incident or trauma.

Regarding the diagnosis of appellant's condition, the Board notes that the evidence of record supports that appellant has a history of gout. In a July 6, 2010 report, Dr. Sauer stated that appellant had a history of gout. Dr. Helu also noted that she treated appellant for gout. Although these reports provided a medical diagnosis, none of the physicians opined on the cause

¹⁰ See *J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² *B.B.*, 59 ECAB 234 (2007); *Woodhams id.* at 345, 352 (1989); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

¹³ *Raymond W. Behrens*, 50 ECAB 221 (1999); *James L. Hearn*, 29 ECAB 278 (1978).

¹⁴ *Id.*

of his gout nor explained how the April 16, 2010 incident caused or aggravated his gout. Similarly, Dr. Missirian noted that she treated appellant for an acute gout attack but did not provide an opinion on the cause of his gout. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁵

The Board also finds that the medical evidence fails to provide a definitive medical diagnosis regarding any condition other than gout. Dr. Sauer observed that appellant's great toe showed mild warmth and swelling and opined that he may have a foot entrapment neuropathy. His opinion that appellant may have foot entrapment neuropathy, however, is speculative in nature. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.¹⁶ In Dr. Campbell's April 19, 2010 emergency room record, he noted appellant's complaints of gout and right foot pain after he played racquetball on Saturday and opined that appellant suffered from acute right ankle pain secondary to possible gout or mild ankle sprain. This opinion is also speculative and equivocal in nature as Dr. Campbell attributes appellant's right ankle pain to either gout or a mild ankle sprain. While the physicians noted appellant's complaints of pain, these reports are insufficient to establish his claim as none of the physicians provided a firm diagnosis of appellant's right foot condition.¹⁷

The additional diagnostic reports are insufficient to meet appellant's burden of proof as they do not support that he suffered an injury as a result of the April 16, 2010 incident. In Dr. Behar's May 7, 2010 diagnostic report, he observed gout but found no definite soft tissue swelling, laceration, radiopaque foreign body, joint space narrowing, cortical erosion and soft tissue clarifications. Dr. Behar concluded that this was a negative examination of the right foot. Similarly, in Dr. Knight's May 12, 2010 CT scan report, he did not find any evidence of fracture, dislocation or irregularity of the articular surfaces. Dr. Knight observed mild degenerative changes involving the subtalar joint manifested as subcortical sclerosis and marginal osteophytes and stated that the scan was an unremarkable CT scan of the foot. These reports are likewise insufficient to establish appellant's claim.

On appeal, appellant alleges that the medical evidence of record established a *prima facie* claim. The evidence submitted, however, does not establish a *prima facie* claim because the medical reports do not provide an accurate history of the accepted event, a definite diagnosis of his condition and rationalized medical opinion explaining how the diagnosed condition occurred as a result to the accepted event. The medical reports of record do not *prima facie* establish that appellant sustained any right foot condition causally related to or aggravated by the April 16, 2010 employment incident.

Appellant also alleges that OWCP did not satisfy its obligation to develop the claim in accordance with Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*. The record reflects, however, that on May 24, 2010 OWCP advised appellant of the medical

¹⁵ *K.W.*, 59 ECAB 271 (2007); *R.E.*, Docket No. 10-679 (issued November 16, 2010).

¹⁶ *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹⁷ *See J.C.*, Docket No. 10-1195 (issued March 23, 2011); *E.K.*, Docket No. 09-1827 (issued April 21, 2010).

evidence needed to establish his claim and requested such evidence.¹⁸ The Board finds that this contention has not been established.

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 607.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a right foot injury causally related to the April 16, 2010 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁸ See *C.B.*, Docket No. 10-1743 (issued June 23, 2011).