



## **FACTUAL HISTORY**

On September 29, 2011 appellant, then a 52-year-old custodian, filed a traumatic injury claim, alleging that he sustained a left foot injury on May 31, 2011 as a result of his employment. He stated that the injury occurred when a general purpose container ran over his left foot when he was pulling it off the dock. Appellant's supervisor reported that notice of the injury was received on September 29, 2011.

Appellant submitted a September 19, 2011 progress report from Dr. Stephen H. Silver, a podiatrist. Dr. Silver noted a diagnosis of a healing Jones stress fracture of the left fifth metatarsal at the proximate base. He stated that appellant had been wearing a "CAM" walker fracture boot for the past month, with reduction of pain at the fracture site. Dr. Silver related that appellant had "no recollection of specific injury or trauma" that caused the fracture.

OWCP also received a Veterans Administration Form 10-5345 dated September 22, 2011, authorization for release of medical records.

By letter dated November 23, 2011, OWCP advised appellant of the evidence necessary to establish his claim. Appellant was asked to provide further information regarding the time and place of the incident. He was also asked to submit a medical report that included dates of examination and treatment, history and date of injury, detailed description of findings, results of tests, diagnosis, clinical course of treatment and a physician's opinion as to how the reported incident caused or aggravated his medical condition.

In response, appellant submitted a December 6, 2011 statement describing the circumstances surrounding his claim. He noted that he did not initially seek medical treatment or file a claim because he thought his condition would improve. Appellant submitted a progress note dated November 23, 2011 from Dr. Silver, who diagnosed appellant with Jones-type stress fracture, and noted that his condition was improving and he could return to work on November 28, 2011 without restrictions.

By decision dated December 29, 2011, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish that appellant's condition was causally related to the May 31, 2011 incident.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed, 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.<sup>4</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. 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.<sup>5</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup>

The opinion of the physician must be based on a complete factual and medical background, 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 compensable employment factors identified by the claimant.<sup>7</sup>

### ANALYSIS

OWCP has accepted that the alleged May 31, 2011 incident occurred when a general purpose container ran over appellant's left foot. Appellant, however, submitted insufficient medical evidence to establish that his left foot fracture was caused by the May 31, 2011 employment incident.

The Board notes that there is no evidence of record that appellant sought medical treatment for his left foot fracture until August 2011. Appellant did not file a claim alleging that the fracture occurred due to the May 31, 2011 incident until September 29, 2011, almost four months later. His explanation for this delay is that he believed his condition would improve. This delay calls into question whether the subsequently diagnosed fracture was in fact related to the accepted employment incident.

Appellant submitted two progress reports from Dr. Silver, who diagnosed a Jones stress fracture of his left foot for which a fracture boot was prescribed. The progress reports from Dr. Silver did not contain any history of the May 31, 2011 incident or offer an affirmative opinion causally relating the diagnosed left fifth metatarsal fracture to the incident at work. In fact, the September 19, 2011 medical report stated that appellant could not recall any incident or trauma that had caused the fracture. This report was generated 10 days prior to when appellant filed his claim of traumatic injury.

OWCP notified appellant in its November 23, 2011 letter that, in order to establish his claim, he needed to provide a medical report that contained a firm diagnosis of his condition as well as medical rationale explaining the nature of the relationship between the diagnosed condition and the incident at work. Appellant failed to submit any medical evidence that meets this requirement. As there is no probative medical opinion that explains how the May 31, 2011

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<sup>5</sup> *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *T.H.*, 59 ECAB 388 (2008).

<sup>7</sup> *D.G.*, 59 ECAB 734 (2008); *G.T.*, 59 ECAB 447 (2008); *I.J.*, 59 ECAB 408 (2008).

incident caused his medical condition, appellant failed to establish the causal relationship element of his claim.

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 failed to establish that he sustained a left foot fracture in the performance of duty on May 31, 2011.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 29, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: December 6, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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