

Regarding the cause of the injury, appellant noted, "Walking on assigned route south and C&D, felt a little discomfort when leaving work." He stopped work on July 10, 2012.²

Appellant initially did not submit any medical evidence in support of his claim. In a July 26, 2012 letter, OWCP advised him of the type of factual and medical evidence needed to support his claim.

In an undated note, Dr. Mark L. Bauman, an attending podiatrist, stated that appellant had been under his care for foot care and needed to remain out of work for physical therapy from July 20 to August 13, 2012.³ In July 13 and 17, 2012 notes, he indicated that appellant was under his care and should remain out of work until July 23, 2012. In the July 17, 2012 note, Dr. Bauman stated that appellant was being treated for acute interdigital neuritis.⁴

In an August 9, 2012 attending physician's report, Dr. Bauman listed the date of injury as May 20, 2009 and the injury as "consistent repetitive pain and burning right third web space."⁵ He checked a "yes" box indicating that he believed that appellant's condition was caused or aggravated by a work activity and noted that his job required "a large amount of walking." In an August 10, 2012 form report, Dr. Bauman recommended various work restrictions. He listed the date of injury as July 9, 2012, the nature of the injury as traumatic neuroma and cause of the injury as "walking on assigned route."⁶

On August 23, 2012 Dr. Bauman further described appellant's reported walking activity at work on July 9, 2012 which was followed by swelling in his right foot. He noted that when he initially saw appellant on July 10, 2012 he had pain in the right third web space "compensating with pain in the ankle." Dr. Bauman described his treatment of appellant's condition and stated, "I believe he had symptomatic and physical changes in his right foot since his original injury of May 2009 leading to the ankle arthritic changes and localized tendinitis. Pain in the ball of the foot was something that was aggravated apparently in July 2012."

In an August 28, 2012 decision, OWCP denied appellant's claim that he sustained a work-related injury on July 9, 2012. It found that he had established a work factor in the form of

² OWCP had previously accepted that on May 20, 2009 appellant sustained work-related neck and lumbar region sprains. These issues are not presently before the Board.

³ A report from May 27, 2011 indicated that Dr. Bauman was treating appellant at that time for a suspected Morton's neuroma of the third web space of his right foot. Dr. Bauman felt that the events of May 20, 2009 "precipitated" appellant's right foot problems. In a May 24, 2012 report, he stated, "[Appellant] currently has a condition known as hallux limitus which is a slightly milder form of hallux rigidus of his right 1st [metacarpophalangeal] joint. This condition is likely secondary to the injury he incurred to his right foot in May 2009.

⁴ Appellant submitted other disability slips, but they were not signed by a physician. He also submitted notes from physical therapists.

⁵ Dr. Bauman stated that a tow motor hit appellant's right foot and hip on May 20, 2009.

⁶ Dr. Bauman noted appellant's clinical findings as pain in the ball of his right foot.

walking his route on July 9, 2012, but that he had not submitted sufficient rationalized medical evidence to establish a specific condition due to this work factor.

Appellant requested a hearing with an OWCP hearing representative. At the December 27, 2012 hearing, he testified that he noticed severe swelling in his right foot after walking his route at work on July 9, 2012. Appellant asserted that he had injured his right elbow, knee and foot at work on May 20, 2009. He did not sustain another foot injury until July 9, 2012. Appellant's counsel argued that the reports of Dr. Bauman supported appellant's claim for a July 9, 2012 work injury.

In a November 14, 2012 report, Dr. Bauman provided another description of appellant's reported walking activity at work on July 9, 2012 which was followed by swelling in his right foot and described his treatment of appellant's foot condition. He stated, "I feel absolutely certainty that the injury and symptomatology that he had on July 09, 2012 was completely related to the injury that occurred in May 2009 at which he has been working valiantly for over three years. The type of injury that he had certainly can, and in his case was, exacerbated by the walking he had to do on the work surfaces that he had to ambulate." In a November 24, 2012 form report, Dr. Bauman recommended various work restrictions. He listed the date of injury as July 9, 2012, the clinical findings as pain in the ball of the right foot and the cause of the injury as "walking on assigned route."⁷ Appellant also submitted additional physical therapy reports.

In a March 28, 2013 decision, OWCP's hearing representative affirmed OWCP's August 28, 2012 decision denying appellant's claim for a July 9, 2012 work injury. She indicated that Dr. Bauman had not provided medical rationale in support of the opinions contained in his reports.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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 within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁸ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁹

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.

⁷ The listed diagnosis was illegible.

⁸ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁹ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

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.¹⁰ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.¹¹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.¹² Physical therapists are not physicians under FECA and are not qualified to provide the necessary medical evidence to meet a claimant's burden of proof regarding medical matters.¹³

ANALYSIS

Appellant filed a traumatic injury claim alleging that he sustained an injury to his right foot by walking on his assigned route on July 9, 2012. The Board finds that he has established a work factor in the form of walking his route on July 9, 2012, but that he has not submitted sufficient rationalized medical evidence to establish that he sustained a specific condition due to this work factor.

Dr. Bauman described appellant's reported walking activity at work on July 9, 2012 and noted that when he initially saw appellant on July 10, 2012 he had pain in the right third web space "compensating with pain in the ankle." He stated, "I believe [appellant] had symptomatic and physical changes in his right foot since his original injury of May 2009 leading to the ankle arthritic changes and localized tend[i]nitis. Pain in the ball of the foot was something that was aggravated apparently in July 2012." Although Dr. Bauman suggested that appellant sustained a right foot injury on July 9, 2012 due to walking his route on that date, his report is of limited probative value on the relevant issue of this case because he did not provide medical rationale in support of his opinion on causal relationship.¹⁴ He did not explain how a specific right foot condition could have been caused by appellant's act of walking at work on July 9, 2012.

¹⁰ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

¹¹ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, *supra* note 10.

¹² See *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

¹³ *Jane A. White*, 34 ECAB 515, 518-19 (1983).

¹⁴ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

Dr. Bauman seemed to also implicate a May 20, 2009 work incident involving the right foot. However, OWCP only accepted that incident as causing neck and lumbar region sprains.¹⁵

Dr. Bauman's November 14, 2012 report also described appellant's reported walking at work on July 9, 2012 and stated, "I feel absolutely certainty that the injury and symptomatology that he had on July 09, 2012 was completely related to the injury that occurred in May 2009 [at] which he has been working valiantly for over three years. The type of injury that [appellant] had certainly can, and in his case was, exacerbated by the walking he had to do on the work surfaces that he had to ambulate." In this report, Dr. Bauman again failed to provide an explanation for his opinion that appellant sustained a right foot injury on July 9, 2012 due to walking. He generally noted that walking can cause foot injuries but he did not explain how appellant's specific activities caused such injury.

Dr. Bauman provided several disability slips showing disability after July 9, 2012, but these slips do not contain a rationalized opinion relating a specific condition to the July 9, 2012 work activities. In July 13 and 17, 2012 notes, he indicated that appellant was under his care and should remain out of work until July 23, 2012. In the July 17, 2012 note, Dr. Bauman stated that appellant was being treated for acute interdigital neuritis. However, he did not explain the cause of this condition. In several form reports, Dr. Bauman listed the date of injury as May 20, 2009 or July 9, 2012, diagnosed such conditions as traumatic neuroma and mentioned appellant's walking activities on July 9, 2012.¹⁶ Although he attributed appellant's foot condition to the July 19, 2012 work factor in some of these brief reports, he did not provide any explanation of why the observed condition was due to the accepted July 9, 2012 factor, *i.e.*, appellant's walking his route on that date.¹⁷

Before OWCP and on appeal, counsel argued that Dr. Bauman's report established appellant's claim, but these reports did not contain adequate medical rationale for the reasons described above. 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 did not meet his burden of proof to establish that he sustained an injury in the performance of duty on July 9, 2012.

¹⁵ The Board notes that the medical record does not otherwise show that appellant sustained a foot injury on May 20, 2009.

¹⁶ In an August 9, 2012 attending physician's report, Dr. Bauman listed the date of injury as May 20, 2009 and the injury as "consistent repetitive pain and burning right third web space." He checked a "yes" box indicating that he believed that appellant's condition was caused or aggravated by a work activity and noted that his job required "a large amount of walking."

¹⁷ Appellant also submitted numerous physical therapy reports, but these documents would not constitute probative medical evidence as physical therapists are not physicians under FECA. *See supra* note 13. Some of the medical reports of record suggest that he sustained a foot injury due to walking at work over an extended period, but it does not appear that he has filed an occupational disease claim.

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 23, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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