

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

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M.J., Appellant)	
)	
and)	Docket No. 14-200
)	Issued: April 7, 2014
DEPARTMENT OF COMMERCE, NATIONAL)	
OCEANIC & ATMOSPHERIC)	
ADMINISTRATION, Norfolk, VA, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 4, 2013 appellant filed a timely appeal from an October 21, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his traumatic injury claim. 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

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a left foot injury as a result of a May 23, 2013 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence following the October 21, 2013 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

FACTUAL HISTORY

On September 17, 2013 appellant, then a 27-year-old engineer, filed a traumatic injury claim alleging that on May 23, 2013 he sustained a knot on his left foot and ankle when a door slammed on his foot in the performance of duty. He stated that the condition worsened over time to the point that he required surgery. Appellant stopped work on October 1, 2013.³

By letter dated September 18, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional evidence to establish that he sustained a diagnosed condition as a result of the alleged May 23, 2013 employment incident.

Appellant submitted an October 10, 2013 request for authorization for diagnostic testing and office visit report from Dr. William Grant, a podiatrist, who diagnosed tenosynovitis of the foot and ankle, nontraumatic rupture of other tendons of the foot, talipes calcaneovalgus and contusion of the foot. Dr. Grant recommended that appellant undergo a magnetic resonance imaging (MRI) scan.

In a decision dated October 21, 2013, OWCP denied appellant's traumatic injury claim. It accepted that the May 23, 2013 incident occurred as alleged but found that the medical evidence failed to establish a left foot or ankle condition causally related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence⁵ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.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.⁷ 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.⁸ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the

³ The record reveals that appellant filed a previous traumatic injury claim (File No. xxxxxx574) for an August 10, 2013 incident.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁸ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

employment incident caused a personal injury.⁹ An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.¹⁰

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.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 The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹³

ANALYSIS

Appellant alleged that on May 23, 2013 he sustained an injury to his left foot as a result of a door slamming on his foot. By decision dated October 21, 2013, OWCP denied his claim finding insufficient medical evidence to establish that he sustained a left foot condition causally related to the accepted May 23, 2013 employment incident. The Board finds that appellant did not meet his burden of proof to establish that he sustained a diagnosed condition as a result of the May 23, 2013 incident.

To support his traumatic injury claim, appellant submitted an October 10, 2013 report from Dr. Grant, a podiatrist. While Dr. Grant diagnosed several left foot conditions, he provided no history of injury or any medical opinion as to how the May 23, 2013 incident caused or contributed to the diagnosed conditions. The issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.¹⁴ Appellant did not submit sufficient medical evidence from a physician to support his claim that his left foot conditions were caused by his employment. Therefore, the Board finds that OWCP properly denied appellant's traumatic injury 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.

⁹ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹¹ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹² *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹³ *James Mack*, 43 ECAB 321 (1991).

¹⁴ *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *David Apgar*, *supra* note 9.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a left foot injury causally related to the May 23, 2013 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2013 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 7, 2014
Washington, DC

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

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

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