

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

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| M.F., Appellant |) | |
| |) | |
| and |) | |
| |) | Docket No. 13-1648 |
| |) | Issued: January 27, 2014 |
| DEPARTMENT OF VETERANS AFFAIRS, |) | |
| VETERANS HEALTH ADMINISTRATION, |) | |
| EGLIN AIR FORCE BASE, FL, Employer |) | |
| |) | |

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 1, 2013 appellant, through her attorney, filed a timely appeal from a May 21, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her 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.

ISSUE

The issue is whether appellant met her burden of proof to establish that her left foot condition was causally related to the September 14, 2011 employment incident.

FACTUAL HISTORY

On January 10, 2012 appellant, then a 54-year-old practical nurse, filed a traumatic injury claim alleging that on September 14, 2011 she experienced pain in her left foot, heel, sole and

¹ 5 U.S.C. § 8101 *et seq.*

ankle as a result of stepping off a ramp while unloading a truck, walking on uneven ground, and moving heavy gear from place to place. She did not stop work.

In an October 31, 2011 progress note, Dr. Julio A. Silva, a Board-certified family practitioner, stated that appellant was seen by a nurse for complaints of left heel pain that began six weeks prior after team emergency response training. Appellant did not initially seek medical consultation but treated her ankle with ice and pain medication. She noted that the pain remained intense and increased after four weeks. Upon examination, Dr. Silva observed pain and tenderness on the left heel. He concluded that appellant had plantar fasciitis and recommended over-the-counter pain medication.

In a December 6, 2011 report, Dr. Tito A. Tanguilig, a Board-certified internist, noted that appellant had a history of chronic left foot and low back pain and conducted an examination. He diagnosed left foot pain, chronic low back pain and intertrigo.

In a December 12, 2011 report, Dr. Wendall V. Gabier, a Board-certified diagnostic radiologist, related appellant's complaints of left foot pain. He observed adequate bone density and intact joint spaces. No signs of fracture or dislocation were noted. Dr. Gabier assessed that appellant's left foot was normal.

In a December 23, 2011 employee health treatment record, a nurse related that appellant was seen on October 31, 2011 for complaints of left foot pain after she returned from training during the week of September 14, 2011.

In a February 2, 2012 report, Dr. Joseph Agostinelli, a Board-certified internist, related appellant's complaints of pain and severe stiffness in the bottom of the heel of the left foot that occurred during constant activities. The onset of pain was sudden with an injury that occurred about five months prior at work when she was lifting heavy weight. Dr. Agostinelli reported that appellant could not bear weight and her symptoms were aggravated by daily activities, exercise, standing, walking and work activities. He reviewed appellant's history and conducted an examination of her left foot. Dr. Agostinelli observed tenderness upon palpation and well-oriented time and intact vascular status pedal pulses. No signs of inflammation, infection or pitting edema were noted. Deep tendon reflexes were intact and range of motion of the ankle was good without pain. Dr. Agostinelli stated that a left x-ray revealed a plantar calcaneal heel spur. He concluded that appellant had joint ankle pain, plantar fasciitis and calcaneal heel spur.

In a letter dated February 13, 2012, the employing establishment controverted appellant's claim alleging that she did not file her traumatic injury claim in a timely manner or report the alleged injury to her supervisor at the time of the alleged incident. It noted that the record did not reflect the activities in which appellant was engaged at the time of the alleged incident and appellant made statements to her supervisor about prior foot problems in June 2011 before the alleged September 14, 2011 injury at work.

In a February 13, 2012 note, Scott Thresher, an emergency manager, related that on February 10, 2012 Lucy Martin, a nurse manager, contacted him about a work-related injury pertaining to appellant. Appellant was injured in September 2011 during a National Emergency Response Team (NEMRT) training session. Mr. Thresher reported that the training occurred from September 13 to 15, 2011 and that approximately 47 personnel attended the three-day event. He noted that water bottles were purchased for every member and proper lifting

techniques were demonstrated for the personnel to unload, set up and tear down equipment for storage. Mr. Tresher stated that nobody informed him that there were any problems with appellant.

In a February 13, 2012 note, Ms. Martin, a nurse manager and appellant's supervisor, stated that to the best of her knowledge there was no history of injury during the exercise in September. She related that in June appellant mentioned to her that she had plantar fasciitis.

On February 24, 2012 OWCP advised appellant that the evidence was insufficient to establish her traumatic injury claim. It requested additional evidence to establish that she actually experienced the alleged September 14, 2011 incident and that she sustained an injury as a result of the incident.

On March 19, 2012 appellant responded to OWCP's development letter. She stated that she reported the injury to her supervisor because she was unable to do the usual morning walk over the bridge due to left foot pain. Appellant noted that her supervisor was told the day of the injury and during the week of training about her left foot pain. She did not sustain any other injury and that the only similar disability was when she broke a toe on her right foot.

In an undated statement, Ms. Martin reported that during NEMRT training in September appellant complained about pain to her foot, but she did not remember which foot. She stated that appellant usually did the morning walk for exercise but did not walk the prior few days due to pain.

In a handwritten March 12, 2012 note, an individual with an illegible signature advised that during NEMRT training he or she observed appellant limping on her left leg while breaking down a tent. Appellant stated that she had left foot pain.

In a March 19, 2012 e-mail, Dr. Joseph P. Monastero, Board-certified in emergency medicine, stated that he was present at the NEMRT training when appellant complained of foot pain. Appellant was unable to do her routine morning walk with the rest of her nurse comrades and the condition still caused trouble.

In a decision dated March 26, 2012, OWCP denied appellant's claim. It accepted that the September 14, 2011 incident occurred as alleged. OWCP found that the medical evidence was insufficient to establish that her left foot condition was causally related to the accepted incident.

On April 23, 2012 appellant requested a hearing, which was held on August 9, 2012. She was represented by Angela Poirson of the American Federation of Government Employees union. Appellant's representative stated that she immediately notified her supervisor of the injury even though she did not file a traumatic injury claim. Ms. Poirson noted that there were many medical reports on the record which showed that appellant was treated in the employee health unit for an injury during training and statements from appellant's coworkers and supervisors that they noticed her limping on the date of the employment incident. Appellant stated that while she was at NEMRT training she was required to carry large tents and metal boxes of equipment, step up on a ramp for loading and walk on uneven ground. She reported that she completed these work activities for about eight hours a day on September 13 and 14, 2011 and began to feel left foot pain at the end of the day on September 14, 2011. Appellant reported that she never had plantar fasciitis prior to September 14, 2011 and that Ms. Martin's

statement that she previously stated that she had plantar fasciitis was a lie. She stated that she did experience back pain prior to September 14, 2011 and noted that her back pain had increased since her left foot problems have caused her to limp. Appellant also explained that there was conflict between herself and Ms. Martin because Ms. Martin had been borrowing money from her over the last two or three years. The hearing representative requested that appellant submit a medical report explaining in medical terms the pathophysiological process of how September 14, 2011 work events caused her foot injury.

In an April 19, 2012 progress note, Dr. Silva related appellant's history of left heel pain that started after team emergency response training. During the training, members carried emergency supplies, loaded and unloaded stretchers, stepped on and off ramps and walked on uneven ground. Dr. Silva reported that the exercise lasted for three days and members wore tennis shoes. Appellant was on her feet for most of the day and safety shoes were not issued. Dr. Silva explained that this environment produced undue stress to the feet of healthcare workers who spend their time in clinics. He reported that a physical examination on October 31, 2013 was consistent with plantar fasciitis.

By decision dated October 24, 2012, an OWCP hearing representative affirmed the March 26, 2012 decision. He found that the medical evidence failed to establish that her left foot condition was causally related to the September 14, 2011 incident.

On March 22, 2013 appellant's counsel submitted a request for reconsideration. He alleged that additional evidence from Dr. Agostinelli constituted sufficient medical evidence to accept the claim.

In a March 12, 2013 form, Dr. Agostinelli described the work activity that caused the incident when appellant lifted a heavy object at work and felt a sharp pain in her heel. He stated that findings on examination and x-rays demonstrated a painful plantar fascial attachment to the medial calcaneal heel on the left foot. Dr. Agostinelli stated:

“In my medical opinion, the facts of injury are the direct and proximate cause of the diagnosis that I cited above. This is based on reasonable medical probability. There may be other causes for this medical problem, but one of the causes is clearly the activities of work described the patient and described above.”

In an identical form dated March 15, 2013, Dr. Silva responded to various questions. He described the work activity that caused the incident as emergency response training exercises which required participants to walk on uneven pavement, carry emergency supplies, set up tents, and step on and off ramps. Dr. Silva reported findings of tenderness on the left sole and diagnosed plantar fasciitis. He signed his name under the same paragraph providing an opinion on causal relationship.

In a decision dated May 21, 2013, OWCP denied modification of its prior decisions. It found that the medical evidence was insufficient to establish that her left foot condition was causally related to the September 14, 2011 employee incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence³ 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.⁴

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.⁵ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.⁶ 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.⁷ 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.⁸

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.⁹ 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.¹⁰ 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.¹¹

ANALYSIS

Appellant alleged that on September 14, 2011 she experienced left foot pain during a training exercise at work as a result of two days of walking on uneven ground, stepping off a ramp while unloading a truck, and moving heavy gear from place to place over a long distance.

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁶ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁷ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

⁹ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹¹ *James Mack*, 43 ECAB 321 (1991).

By decision dated March 26, 2012, OWCP accepted that the September 14, 2011 work activities occurred as alleged but it denied appellant's claim finding insufficient medical evidence to establish that her left foot condition was causally related to the accepted incident. The Board finds that she failed to meet her burden of proof to provide sufficient medical evidence demonstrating that the September 14, 2011 employment incident caused or contributed to her left foot condition.

Appellant submitted various reports by Dr. Silva. In progress notes dated October 31, 2011 and April 19, 2012, Dr. Silva reported that she was examined for complaints of left heel pain that began six weeks ago after emergency response training. He stated that members carried emergency supplies, loaded and unloaded stretchers, stepped on and off ramps and walked on uneven ground. Dr. Silva noted that appellant was on her feet for most of the day and safety shoes were not issued. Upon examination, he observed pain and tenderness on the left heel and diagnosed plantar fasciitis. Dr. Silva explained that this environment produced undue stress to the feet especially to healthcare workers who spend their time in clinics. In a March 15, 2013 report, he signed his name under a paragraph supporting causal relationship. Although Dr. Silva provided an opinion on causal relationship he does not provide any medical rationale explaining how the work activities of September 14, 2011 caused or contributed to appellant's left foot condition. The Board has held 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.¹² The Board further notes that Dr. Silva's signature underneath a standard form paragraph supporting causal relationship is similar to checking a box marked "yes" to a form question regarding causal relationship that is unsupported by any explanation or medical rationale.¹³ Similarly, Dr. Agostinelli's reports are also insufficient to establish causal relationship because his opinion on causal relationship consists only of signing his name under an identical form statement supporting causal relationship without any medical explanation or rationale to support his opinion.

The additional medical reports by Drs. Tanguilig and Gabier also fail to establish appellant's claim. While both physicians note appellant's complaints of left foot pain, none of the physicians provide a firm, medical diagnosis of appellant's left foot condition nor an opinion on the cause of appellant's left foot pain. The Board has held 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.¹⁴

Appellant's counsel contends on appeal that OWCP's decision was contrary to fact and law. He has not, however, provided sufficient evidence establishing that appellant met her burden of proof to establish her traumatic injury claim. The issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.¹⁵ As

¹² *T.M.*, Docket No. 08-975 (issued February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹³ The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim. See *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹⁴ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁵ *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *David Apgar*, 57 ECAB 137 (2005).

the record does not contain such probative medical evidence to establish that her left foot condition was causally related to the September 14, 2011 employment incident appellant has not met her burden of proof in this case.

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 establish that her left foot condition was causally related to the September 14, 2011 employment incident.

ORDER

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

Issued: January 27, 2014
Washington, DC

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

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

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