

form, the employing establishment controverted appellant's claim noting that he previously had a rupture of the tendons of his right foot and ankle with injury to the peroneal nerve. It noted that appellant had previously undergone surgery to correct a previous rupture of tendons of the right foot and ankle with injury to the peroneal nerve on April 20, 2012 and had returned to work in a limited-duty capacity on May 7, 2012.

Dr. Chalonda Hill, a Board-certified internist, examined appellant on June 18, 2013 and noted his history of injury. She diagnosed right ankle pain, chronic ankle instability, deformity cavovarus acquired, and peroneus brevis tendon tear. Appellant also reported to a nurse on June 18, 2013 walking up the stairs and hearing a pop in his right foot.

In a letter dated July 10, 2013, OWCP requested additional factual and medical evidence in support of appellant's claim. Appellant submitted a narrative statement and described the incident of June 17, 2013 as walking up a flight of stairs to exit the building, hearing a pop, and feeling a sharp pain on the outside of his foot and ankle. He noted swelling when he arrived home and sought treatment the following day at the employing establishment health unit.

Appellant submitted an attending physician's report dated August 18, 2013 from Dr. Daniel J. Cuttica, an osteopath. This report diagnosed injury to right foot while walking up the stairs and indicated that he had a prior right ankle instability with a tendon tear. Dr. Cuttica diagnosed tendon tear and indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity as it occurred while at work. He recommended an MRI scan. Dr. Cuttica submitted a similar report dated September 5, 2013 diagnosing "concern for a peroneal longus tendon tear" and noting an abnormal physical examination with swelling and a palpable mass in addition to the statements on the August 18, 2013 form report.

By decision dated September 16, 2013, OWCP denied appellant's claim finding that he failed to submit sufficient medical opinion evidence to meet his burden of proof.

On September 8, 2013 Dr. Cuttica requested an MRI scan of appellant's right ankle. He described appellant's June 2013 employment incident and stated that he was concerned that appellant had ruptured his peroneal tendon due to pain and swelling in this area. Dr. Cuttica stated that appellant had a palpable mass in the area of the peroneal and very weak eversion. Appellant submitted additional form reports from Dr. Cuttica dated September 5, 10, and 18, 2013, which indicated that appellant's current condition was a recurrence of injury at work. He underwent an MRI scan on October 1, 2013 which demonstrated marked attenuation of the peroneus longus and brevis tendons concerning from recurrent tear. On October 3, 2013 Dr. Cuttica stated that appellant experienced a new, sudden, and traumatic injury to his right ankle on June 17, 2013 when he felt a pop and immediate pain over the lateral aspect of his right ankle while at work. He repeated his findings concerning for a peroneal tendon rupture. Dr. Cuttica stated that the MRI scan dated October 1, 2013 revealed findings consistent with significant, high-grade tearing and attenuation of his peroneal longus tendon. He stated that this was a new tendon injury and that the tendon was irreparable.

Appellant requested an oral hearing from an OWCP hearing representative on October 10, 2013. Dr. Cuttica completed a narrative report submitted on May 1, 2014 and described his treatment of appellant following the June 17, 2013 employment incident. He stated that he examined appellant on June 20, 2013 and that appellant then reported experiencing a

popping sensation and increased pain in his right ankle after walking up stairs at work on June 17, 2013. Dr. Cuttica stated that appellant's examination demonstrated increased swelling and pain along his peroneal and a palpable mass behind his fibula, a new finding, which was concerning from a possible ruptured peroneus longus tendon. He stated that review of appellant's MRI scan demonstrated new tearing and attenuation of the peroneus longus tendon.

Appellant testified at the oral hearing on April 25, 2014 and stated that he lost time from work due to this injury. He described the employment incident of walking up a flight of stairs in the main employing establishment building. Appellant stated that he felt a pop in the outside of his right foot or ankle. He stated that he was getting ready to go home by meeting his car pool on the parking deck. Appellant described his previous employment injury of rolling his ankle. He stated that his prior claim was accepted for a torn tendon and that he underwent a surgical repair.

By decision dated July 15, 2014, OWCP hearing representative found that appellant had not submitted the necessary medical opinion evidence to meet his burden of proof. He stated that the employment incident occurred as alleged, but that medical evidence containing an accurate history of injury, definitive diagnosis and unequivocal medical opinion addressing the causal relationship between the accepted employment trauma and the diagnosis provided with medical rationale was not present in the record.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and 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 or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."⁵ To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. 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.⁶ Second, the employee must submit

² *Id.*

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ 20 C.F.R. § 10.5(ee).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.⁷

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.⁸ Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.⁹

ANALYSIS

Appellant filed a claim for a traumatic injury alleging that he injured his foot and ankle on June 17, 2013 walking up stairs in the employing establishment. The record establishes that he had a previously accepted claim for rupture of his peroneus brevis tendon in his right foot with surgical repair and chronic ankle instability. OWCP accepted that the incident occurred in the performance of duty on July 17, 2013. It found that appellant had not submitted sufficient medical opinion evidence to establish a diagnosed ankle condition resulting from the June 17, 2013 employment incident.

In support of his claim, appellant submitted a series of form reports from Dr. Cuttica, beginning on August 18, 2013 noting his history of injury on June 17, 2013 and his prior ankle injury. Dr. Cuttica diagnosed concern for a peroneal longus tendon tear and indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity as it occurred while at work. These form reports are not sufficient to meet appellant's burden of proof as the reports do not contain a definite diagnosis. Dr. Cuttica indicated that he was concerned that appellant had a peroneal longus tendon tear, but did not clearly state that this was his diagnosis.

On October 3, 2013 Dr. Cuttica reported appellant's June 17, 2013 employment incident and reviewed the October 1, 2013 MRI scan finding a significant, high-grade tearing and attenuation of the peroneal longus tendon. He stated that this was a new tendon injury and that the tendon was irreparable. Dr. Cuttica completed a narrative report submitted on May 1, 2014 and described his treatment of appellant following the June 17, 2013 employment incident. He stated that he examined appellant on June 20, 2013 and that appellant then reported experiencing a popping sensation and increased pain in his right ankle after walking up stairs at work on June 17, 2013. Dr. Cuttica stated that appellant's examination demonstrated increased swelling and pain along his peroneal and a palpable mass behind his fibula, a new finding, which was concerning from a possible ruptured peroneus longus tendon. He stated that review of appellant's MRI scan demonstrated new tearing and attenuation of the peroneus longus tendon.

⁷ *J.Z.*, 58 ECAB 529 (2007).

⁸ *T.F.*, 58 ECAB 128 (2006).

⁹ *A.D.*, 58 ECAB 149 (2006).

While these reports include a diagnosis, tearing, and attenuation of the peroneus longus tendon, as well as a history of injury, Dr. Cuttica did not provide a detailed, well-reasoned opinion that appellant's activity of walking up stairs could and did result in the diagnosed condition. Without medical opinion evidence explaining how and why the employment incident caused or contributed to appellant's diagnosed tendon tear, these reports are not sufficient to meet his burden of proof.

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 has not submitted sufficient detailed and well-reasoned medical opinion evidence to establish a causal relationship between his accepted employment incident and his diagnosed tendon tear to meet his burden of proof in establishing a traumatic injury claim.

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 26, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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