

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

J.W., Appellant

and

**DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE, Tucson, AZ,
Employer**

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**Docket No. 15-1415
Issued: October 16, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 16, 2015 appellant filed a timely appeal of a December 22, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 has met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on November 7, 2013.

FACTUAL HISTORY

On November 25, 2013 appellant then a 52-year-old park ranger, filed a Form CA-1, traumatic injury claim, alleging that on November 7, 2013 he was in training and performing a

¹ 5 U.S.C. §§ 8101-8193.

three-mile fast walk with a 45-pound pack when he experienced pain in the right heel. He advised that he had pain when walking “at speed” or in bare feet. Appellant did not stop work.

Appellant submitted a referral for physical therapy from Dr. Stephanie Price, a family practitioner, dated December 19, 2013. Dr. Price noted appellant’s treatment for right plantar fasciitis and a heel spur and recommended physical therapy to decrease pain. Appellant also submitted physical therapy reports from December 19, 2013 to January 17, 2014, where he was treated for plantar fasciitis. The therapist noted that appellant reported training for a work test which required walking three miles in 45 minutes with a 45-pound pack in October and in November he noticed significant pain in his foot. The therapist noted a date of onset of November 2012 as a result of training and walking.

By letter dated February 13, 2014, OWCP advised appellant of the type of evidence needed to establish his claim, particularly requesting that he submit a physician’s reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

In a March 12, 2014 report, Dr. Robert Lane Tassin, a Board-certified internist, noted that appellant presented with constant pain in the right leg. Appellant reported that the condition was the result of an injury “which was not work related” and the onset was associated with prolonged standing/walking. Dr. Tassin further reported that in October 2013 appellant was training for a “pack test” and developed right foot pain. He diagnosed pain in the joint, ankle and foot, fasciitis, and a heel spur. Dr. Tassin noted that appellant could not be on his feet for prolonged periods or walk more than one mile a day until he was seen by an orthopedist. He stated that appellant’s current complaints began while training for a “pack test” in October 2013. Dr. Tassin noted that an x-ray showed a heel spur. He recommended weight reduction, use of orthotics, and to seek treatment with an orthopedist or podiatrist. Dr. Tassin noted that appellant was fit for duty. Appellant also submitted additional physical therapy reports.

OWCP received an October 2, 2013 letter of expectation from the employing establishment informing appellant that he had a reasonable time period to pass the red card pack test as required by his position description. The employing establishment noted that appellant had not passed the test in two years. It provided him until December 31, 2013 to pass the test and stated that he should contact the employing establishment if he did not believe he could safely accomplish this task.

In a decision dated March 20, 2014, OWCP denied appellant’s claim for compensation, finding that the medical evidence was insufficient to establish that he sustained an injury or medical condition causally related to the accepted work events of November 7, 2013.

On April 2, 2014 appellant requested an oral hearing before an OWCP hearing representative which was held on October 9, 2014. In an undated statement, he noted that the employing establishment required that he complete the pack test by December 31, 2013. Appellant noted beginning training for the pack test more intensely given the short amount of time left to prepare and he began to have foot pain which became severe while on a pack test workout on November 7, 2013. He believed the pain would ease up with ice and ibuprofen but his condition persisted and he filed a traumatic injury claim. Appellant was treated on December 19, 2013 and was diagnosed with plantar fasciitis and referred for physical therapy.

He noted that physical therapy helped reduce the pain and he stopped physical therapy when his claim was denied by OWCP. Appellant submitted a description of the “pack test” work capacity testing for wild land firefighters.

Appellant submitted a December 19, 2013 report from a nurse practitioner who treated him for constant right foot pain since November 7, 2013. He reported his foot pain was not the result of an injury. The nurse practitioner noted that appellant complained of right heel pain over the past three weeks since training for his work physical which required carrying a heavy pack and prolonged hiking. She noted x-rays revealed calcaneus, no fractures or avulsions, no soft tissue swelling, a heel spur and bone abnormality. The nurse practitioner diagnosed plantar fasciitis and noted appellant was fit for duty without restrictions.

In a decision dated December 22, 2014, an OWCP hearing representative affirmed the March 20, 2014 decision.

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 filed within the applicable time limitation 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 is causally related to the employment injury. 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.²

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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.³

Rationalized medical opinion evidence is generally required to establish causal relationship. 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 employment factors identified by the claimant.⁴

ANALYSIS

It is not disputed that on November 7, 2013 appellant was performing a three-mile fast walk with a 45-pound pack while in the performance of duty. It is also not disputed that

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *T.H.*, 59 ECAB 388 (2008).

⁴ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

appellant was diagnosed with plantar fasciitis and a heel spur. However, appellant has not submitted sufficient medical evidence to establish that his diagnosed conditions were caused or aggravated by this incident.

On February 13, 2014 OWCP advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from an attending physician addressing how specific employment factors may have caused or aggravated his claimed condition.

Appellant submitted a March 12, 2014 report of Dr. Tassin who noted that appellant presented with constant pain in the right leg. He reported the condition was the result of an injury which was not work related and the onset was associated with prolonged standing and walking. Appellant further related that in October 2013 he was training for a “pack test” and developed right foot pain. Dr. Tassin diagnosed fasciitis and a heel spur. His report is insufficient to establish the claim as the physician did not provide an accurate history of injury.⁵ Dr. Tassin noted appellant’s right leg pain began while training for the pack test in October 2013. Appellant experienced pain in the foot, joint, and ankle and had fasciitis. This history is inconsistent with the history provided by appellant who noted that on November 7, 2013 he was performing a three-mile fast walk with a 45-pound pack and experienced pain in the heel. Furthermore, Dr. Tassin’s report is contradictory in that it relates that appellant stated that the injury was not work related but the same report states that the foot pain began while appellant trained for a pack test that was part of his employment. Dr. Tassin did not explain this discrepancy nor did he provide any medical reasoning explaining how a particular work activity on a particular date caused or contributed to a diagnosed medical condition.

Appellant also provided evidence from a nurse practitioner and physical therapists. However, the Board has held that treatment notes signed by a nurse or a physical therapist are not considered probative medical evidence as these providers are not a physician under FECA.⁶

Consequently, the medical evidence is not sufficient to meet appellant’s burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.⁷ Appellant failed to submit such evidence, and has thus failed to meet his burden of proof.

⁵ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

⁶ *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA). *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a “physician” as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

⁷ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

On appeal appellant asserts that OWCP had improperly denied his claim and believed he submitted sufficient evidence to establish that on November 7, 2013 he sustained plantar fasciitis and a heel spur. As noted above, the medical evidence does not establish that his diagnosed conditions were causally related to his employment. Appellant has not submitted a physician's report, based on an accurate history, which describes how work activities on November 7, 2013 caused or aggravated a diagnosed right leg condition.

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 a traumatic injury in the performance of duty on November 7, 2013.

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 16, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board