



work on December 11, and returned to work on December 16, 2013. Appellant notified his supervisor on February 19, 2014 of the alleged injury. Appellant's supervisor checked the box marked "yes" when asked if her knowledge of the facts of injury agreed with appellant's statements.

By letter dated April 25, 2013, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the factual and medical evidence needed and he was asked to respond within 30 days.

In a detailed statement, appellant reported that at 10:30 a.m. on December 7, 2013, he was delivering mail when he turned to go down icy steps. He slipped and fell, landing on his lower left leg. An accident report form was also submitted.

A partially illegible medical note dated December 10, 2013 from Crittenden Regional Hospital documented appellant's treatment and aftercare instructions.

By decision dated April 2, 2014, OWCP denied appellant's claim finding that the evidence was insufficient to establish that he sustained an injury because he did not submit any medical evidence containing a medical diagnosis in connection with the accepted December 7, 2013 employment incident. It noted that the medical evidence submitted was illegible and that did not provide a history of how he was injured.

On April 22, 2014 appellant requested an oral hearing before the Branch of Hearings and Review. He argued that his claim should be accepted as he was off work for four days following the incident and could not afford to pay his medical bills.

In support of his claim, appellant submitted a December 10, 2013 diagnostic report from Dr. Jeffrey W. Green, a Board-certified diagnostic radiologist. Dr. Green reported a history of a fall and found that an x-ray of the left tibia/fibula revealed no acute bony abnormality. He further found that an x-ray of the left ankle revealed no acute bony abnormality.

A hearing was held on December 10, 2014 where appellant argued that his injury was caused by the December 7, 2013 employment incident. Appellant was advised of the medical evidence needed to meet his burden of proof and the record was held open for 30 days to allow him to submit further evidence. No other evidence was received.

By decision dated January 28, 2015, the Branch of Hearings and Review affirmed the April 2, 2014 decision finding that appellant failed to establish a firm medical diagnosis causally related to the accepted December 7, 2013 employment incident.

### **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; that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed are causally related to the

employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>3</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>4</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>5</sup> 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of 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.<sup>6</sup>

### ANALYSIS

OWCP accepted that the December 7, 2013 employment incident occurred as appellant had alleged. The issue, therefore, is whether the record contains medical evidence that establishes the employment incident caused a left leg injury. The Board finds that the medical evidence is deficient on two grounds: first, it fails to provide a firm diagnosis; and second, there is no narrative, rationalized medical opinion on causal relationship.

A December 10, 2013 after care instructions note was submitted from Crittenden Regional Hospital documenting treatment on that date. The Board notes that the form was largely illegible and cannot establish appellant's traumatic injury claim because neither the diagnosis nor the author can be determined.

The only other medical evidence of record was Dr. Green's December 10, 2013 diagnostic report which noted that an x-ray of the left tibia/fibula and left ankle revealed no acute

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<sup>2</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>3</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>4</sup> *Elaine Pendleton*, *supra* note 2.

<sup>5</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>6</sup> *James Mack*, 43 ECAB 321 (1991).

bony abnormality. As the physician reported normal diagnostic findings, his report cannot establish a firm medical diagnosis of an injury.<sup>7</sup> This report also offered no opinion on causal connection.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.<sup>8</sup> An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.<sup>9</sup> To establish a firm medical diagnosis and causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment alleged to have caused his condition and, taking these factors into consideration, as well as findings upon examination and his medical history, explain how these employment factors caused or aggravated any diagnosed condition, and present medical rationale in support of his opinion.<sup>10</sup>

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained a left lower leg injury in the performance of duty on December 7, 2013.

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<sup>7</sup> *J.P.*, Docket No. 14-87 (issued March 14, 2014).

<sup>8</sup> *Daniel O. Vasquez*, 57 ECAB 559 (2006).

<sup>9</sup> *D.D.*, 57 ECAB 734 (2006).

<sup>10</sup> *Supra* note 4.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 28, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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