



## **FACTUAL HISTORY**

On June 2, 2015 appellant, then a 53-year-old animal caretaker, filed a traumatic injury claim (Form CA-1) alleging that on April 26, 2015 he stepped into an unmarked and unprotected hole in a walkway area and sprained his right ankle while performing animal care duties. He stopped work on April 28, 2015 and returned to work on May 11, 2015.

Appellant submitted an April 26, 2015 report from Dr. Michelle Beshara, a Board-certified general surgeon, who treated appellant for a right ankle sprain and right foot sprain. Dr. Beshara recommended ice and an ace bandage. In a work status report dated April 26, 2015, she diagnosed right foot sprain and recommended modified duty from April 26 to May 10, 2015. Appellant also submitted an April 29, 2015 report from Dr. John A. Villanueva, a Board-certified physiatrist, who diagnosed right ankle sprain and right knee joint pain. Dr. Villanueva noted that appellant was disabled from April 29 to May 9, 2015 and could return to work limited duty on May 10, 2015. In a work status report dated June 9, 2015, he noted that appellant injured his ankle on April 26, 2015. Dr. Villanueva diagnosed right ankle joint pain and right ankle sprain. He recommended an ankle sleeve and ice and returned appellant to modified work status on June 9, 2015.

In a June 10, 2015 accident report, appellant indicated that on April 26, 2015 he entered the canine social housing unit and while doing visual observations on the conditions of the research animals he stepped into a hole and sprained his right ankle. He indicated that, upon exiting the immediate area, he tripped on an exposed sprinkler head that was covered with mulch.

By letter dated June 16, 2015, 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 event.

In a decision dated June 16, 2015, OWCP determined that appellant was not entitled to continuation of pay for the period April 27 to June 10, 2015 because he did not file his claim within 30 days of the alleged injury.

Appellant submitted an attending physician's supplemental report (Form CA-20a) from Dr. Taha M. Ahmad, a Board-certified physiatrist, dated June 9, 2015, who noted that appellant was released to modified duty. In a June 23, 2015 attending physician's supplemental report, Dr. Ahmad released appellant to full duty. In reports dated June 9 and 23, 2015, Dr. Villanueva treated appellant in follow-up for right ankle and right knee pain from a work-related injury. Appellant reported that the swelling and erythema decreased. However, he continued to experience pain in the lateral malleolus and lateral inferior tibia area. Appellant noted his right knee condition resolved. Dr. Villanueva noted findings on examination of swelling of the lateral ankle, ecchymosis of the lateral ankle, mild tenderness in the right lateral ankle in the anterior talofibular ligament and calcaneofibular ligament, limited range of motion due to pain, intact motor examination, and intact sensation examination. He diagnosed right lateral ankle sprain slowly improving and right ankle joint pain. Dr. Villanueva returned appellant to work with restrictions and recommended an ankle sleeve and ice.

In a decision dated July 16, 2015, OWCP denied appellant's claim because the evidence of record was insufficient to establish an injury or medical condition causally related to the accepted work events.

On July 27, 2015 appellant requested a review of the written record by an OWCP hearing representative. He noted that he no longer worked for the employing establishment and was employed by the Department of Agriculture. Appellant indicated that he had proof of a work-related injury in medical records and photographs.

The employing establishment noted that appellant separated from employment on July 3, 2015.

In a decision dated January 5, 2016, the OWCP hearing representative affirmed the July 16, 2015 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish 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.<sup>3</sup>

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.<sup>4</sup>

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>5</sup> Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to

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<sup>3</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>4</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>5</sup> *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.<sup>6</sup>

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.<sup>7</sup>

### ANALYSIS

It is undisputed that on April 26, 2015 appellant stepped into an unmarked and unprotected hole in a walkway area while performing animal care duties. It is also undisputed that he was diagnosed with a right ankle sprain. However, the Board finds that appellant has not submitted sufficient medical evidence to establish that stepping into an unmarked and unprotected hole in a walkway area caused a right ankle injury.

Appellant submitted an April 29, 2015 report from Dr. Villanueva who diagnosed right ankle sprain and right knee joint pain. Dr. Villanueva noted that appellant was disabled from April 29 to May 9, 2015 and could return to limited duty on May 10, 2015. In reports dated June 9 and 23, 2015, he treated appellant in follow-up for right ankle and right knee pain from a work-related injury. Dr. Villanueva noted positive findings on examination and diagnosed right lateral ankle sprain improving and right ankle joint pain. Similarly, in an industrial work status report dated June 9, 2015, he noted that appellant sustained an ankle injury on April 26, 2015. Dr. Villanueva diagnosed right ankle joint sprain and released appellant to modified duty. However, he did not provide a history of injury<sup>8</sup> or specifically explain how the April 26, 2015 work incident caused or aggravated a diagnosed medical condition.<sup>9</sup> Therefore these reports are insufficient to meet appellant's burden of proof.

In an April 26, 2015 report, Dr. Beshara treated appellant for a right ankle sprain and right foot sprain. She recommended conservative treatment including ice and an ace bandage. In a work status report dated April 26, 2015, Dr. Beshara diagnosed right foot sprain and recommended modified duty. Similarly, in attending physician's supplemental report forms dated June 9 and 23, 2015, Dr. Ahmad released appellant to full duty. Dr. Beshara's and Dr. Ahmad's reports are insufficient to establish appellant's claim as the physicians did not

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<sup>6</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *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).

<sup>9</sup> *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

provide a history of injury<sup>10</sup> or specifically explain how the April 26, 2015 work incident caused or aggravated a diagnosed medical condition.

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 her condition was caused, precipitated, or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.<sup>11</sup> As appellant failed to submit such evidence she has not met her burden of proof.

On appeal appellant asserts that he did not receive timely correspondence from OWCP as he relocated to Georgia and his mail was not forwarded. He indicates that he mailed and faxed evidentiary findings to OWCP, however, the facsimile number was not functioning. The record supports that OWCP's July 16, 2015 and January 5, 2016 decisions were sent to appellant at the address of record and does not indicate that it was returned as undeliverable. Under the "mailbox rule," it is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.<sup>12</sup>

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 failed to establish an injury causally related to an April 26, 2015 employment incident.

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<sup>10</sup> See *supra* note 8.

<sup>11</sup> See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>12</sup> *A.C. Clyburn*, 47 ECAB 153 (1995).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 5, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 24, 2016  
Washington, DC

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

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

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