

ISSUE

The issue is whether appellant has established a fracture of the right lesser toes causally related to the accepted August 1, 2016 employment injury.

FACTUAL HISTORY

On August 4, 2016 appellant, then a 67-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on August 1, 2016 a dock plate struck his left foot while in the performance of duty.⁴ In a brief note dated August 1, 2016, he indicated that he tried to pull up a dock plate that was stuck, and the plate came up and fell on his right foot.

In a form report dated August 1, 2016, Dr. Jose Ayala, a Board-certified family practitioner, diagnosed laceration without foreign body of right lesser toes and displaced unspecified fracture of the right lesser toes. He wrote that appellant could return to work if sitting 100 percent of the time. In an additional form report dated August 2, 2016, Dr. Ayala diagnosed laceration without foreign body of the right lesser toes. He reported that appellant must use crutches and could not drive.

The record also contains a duty status report (Form CA-17) dated August 1, 2016.⁵ The physician diagnosed right foot trauma.

By decision dated August 11, 2016, OWCP accepted laceration of right lesser toes without foreign body. It also found that the diagnosis of displaced fracture of the right lesser toes was not established as employment related. OWCP advised appellant that he should forward more specific documentation from his treating physician, such as diagnostic notes, to establish that the diagnosed displaced fracture of the right lesser toes was employment related.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁷ To establish causal relationship between a diagnosed condition and the employment injury, the opinion of the physician must be based on a complete factual and medical background of reasonable medical certainty and supported by sound medical rationale explaining the nature of the relationship between the diagnosed condition and federal employment. The weight of medical evidence is

⁴ While appellant wrote on the claim form that he injured his left foot, his additional statement and the medical evidence clearly indicate the injury was to the right foot.

⁵ The physician's signature on the form is illegible.

⁶ *Supra* note 2.

⁷ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

OWCP accepted laceration of the right lesser toes, without foreign body, as causally related to the August 1, 2016 employment incident. The August 11, 2016 OWCP decision also found that another diagnosed condition, open displaced fracture of the right lesser toes, was not accepted.

The Board finds that OWCP properly determined that the evidence of record was insufficient to establish a fracture of the right lesser toes causally related to the August 1, 2016 employment injury.

OWCP procedures provide that if multiple conditions have been claimed and the evidence submitted supports acceptance of some, but not all, of the conditions and the remaining conditions have not been developed, the claims examiner should issue an acceptance letter for the compensable conditions and concurrently issue a development letter for the remaining claimed conditions. The development may be undertaken in either the acceptance letter itself or by separate correspondence.⁹

Dr. Ayala had diagnosed a fracture in his August 1, 2016 form report, without further explanation. He did not provide a history of injury, results on examination, or a rationalized medical opinion explaining causal relationship between the diagnosed fracture and the August 1, 2016 employment injury. Medical evidence that consists primarily of a diagnosis, without other indicia of a probative medical report such as a history, results on examination, and an opinion on causal relationship, is of limited probative value.¹⁰ The Board notes that in his August 2, 2016 report, Dr. Ayala no longer provided a diagnosis of the right lesser toes fracture.

It is appellant's burden of proof to establish a specific condition as employment related. The Board finds that appellant did not meet his burden of proof.¹¹ The only adverse finding by OWCP was the August 11, 2016 determination that the right lesser toes fracture was not causally related to the August 1, 2016 employment injury.

For the reasons discussed, the Board finds that appellant has not established a diagnosed fracture as causally related to the accepted August 1, 2016 employment injury.

⁸ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Acceptances*, Chapter 2.806.4(b) (June 2011).

¹⁰ *See E.C.*, Docket No. 16-0900 (issued September 2, 2016); *I.B.*, Docket No. 16-1095 (issued August 1, 2016).

¹¹ On appeal appellant submitted time analysis forms indicating that he was off work from September 19 to October 17, 2016 for "therapy." The record reflects however that appellant was reimbursed for leave without pay for the period September 19 through October 28, 2016.

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 established a fracture of the right lesser toes causally related to the accepted August 1, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 11, 2016 is affirmed.

Issued: July 19, 2017
Washington, DC

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

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

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