

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

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| M.W., Appellant |) | |
| |) | |
| and |) | Docket No. 17-1063 |
| |) | Issued: November 2, 2017 |
| DEPARTMENT OF THE INTERIOR, |) | |
| NATIONAL PARK SERVICE, Hot Spring, SD, |) | |
| Employer |) | |
| |) | |

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 18, 2017 appellant filed a timely appeal of an April 4, 2017 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 in this case.

ISSUE

The issue is whether appellant met his burden of proof to establish a left foot injury causally related to the August 16, 2016 employment incident.

FACTUAL HISTORY

On August 19, 2016 appellant, then a 61-year-old temporary park guide, filed a traumatic injury claim (Form CA-1) alleging that on August 16, 2016, while walking towards the visitor center after a tour, something "snapped" in his left foot. The employing establishment advised

¹ 5 U.S.C. § 8101 *et seq.*

that appellant stopped work on August 19, 2016 and returned to work the next day. Appellant had a temporary appointment from May 1 to September 5, 2016.

Appellant was treated by a nurse practitioner on August 16, 2016 for left foot pain. He reported ending his tour of duty and walking from an elevator to the visitor center when he felt something snap in his foot and felt pain. The nurse practitioner noted findings on examination of redness and swelling over the second, third, and fourth metatarsals of the left foot. X-rays of the left foot revealed no dislocation or acute fracture. The nurse practitioner diagnosed acute pain, injury of the left foot, and placed appellant in a controlled ankle motion (CAM) walker boot. On September 1, 2016 she treated appellant in follow up for a left foot injury. Appellant reported consistently wearing the CAM-walker boot, but his pain did not improve. The nurse practitioner noted that x-rays of the left foot revealed a fracture of the third metatarsal bone. She referred appellant to a podiatrist.

The employing establishment issued appellant authorization for examination and/or treatment (Form CA-16) on August 19, 2016. In an accompanying August 29, 2016 report, Dr. Avery Sides, Board-certified in family medicine, indicated that appellant was walking and something snapped in his left foot and he experienced acute left foot pain. A diagnosis of left foot injury was provided and he was placed in a CAM-walker boot. Appellant was advised to resume regular work with no prolonged standing or walking. Dr. Sides checked a box marked “yes” indicating that the left foot injury was caused or aggravated by work.

Appellant also submitted two sets of left foot x-rays. The first set, dated August 16, 2016, revealed no abnormalities. However, an x-ray of the left foot dated September 1, 2016 revealed a transverse mildly-displaced second metatarsal fracture.

By letter dated September 22, 2016, OWCP advised appellant of the deficiencies in his claim and afforded him the opportunity to submit additional factual and medical evidence. This included providing a report from his attending physician, which contained a rationalized opinion addressing how the August 16, 2016 incident caused or contributed to the claimed condition.

Appellant was treated for his left foot condition by Dr. Richard Raska, a podiatrist. On September 16, 2016 he performed an open reduction and internal fixation of the left second metatarsal and diagnosed a closed second metatarsal fracture displaced dorsally and proximally. In a September 20, 2016 report, Dr. Raska noted that appellant was status post open reduction and internal fixation of left second metatarsal and progressing well. He noted minimal edema, resolved ecchymosis, and stable osteotomy sites. Dr. Raska diagnosed closed displaced fracture of the second metatarsal bone of the left foot with routine healing. He noted an x-ray of the left foot revealed displaced fracture of the second metatarsal bone. Dr. Raska recommended that appellant remain in the CAM-walker boot and nonweight bearing.

On October 10, 2016 Dr. Michele Mulligan, a Board-certified family practitioner, completed an attending physician’s report (Form CA-20). She noted that on August 16, 2016 appellant began having pain with ambulation and was diagnosed with a fracture with displacement. Dr. Mulligan diagnosed stress fracture of the metatarsal. She noted that she was not qualified to provide an opinion as to whether appellant’s injury was caused or aggravated by an employment activity because she did not evaluate appellant as he was treated by a podiatrist.

Dr. Mulligan indicated that she only performed a physical for surgery and obtained the relevant history.

In an attending physician's report dated October 10, 2016, Dr. Christopher Robbins, a Board-certified family practitioner and an associate of Dr. Sides, treated appellant for left foot pain after an August 16, 2016 injury. He noted the first x-ray failed to reveal a fracture and that appellant was placed in a boot and treated conservatively. Dr. Robbins diagnosed fracture of the second metatarsal bone of the left foot. He noted with a checkmark "yes" on a form report that appellant's condition was caused or aggravated by an employment activity. Dr. Robbins indicated that appellant had completed his work in South Dakota, was heading to his home location, and that he was referred to a foot specialist there.

The employing establishment controverted the claim on October 25, 2016. It noted that appellant was a temporary employee with the employing establishment and his appointment was for the period May 1 to September 5, 2016. It was noted that appellant was requesting compensation for dates outside his temporary appointment from September 6 to October 22, 2016.²

In a decision dated October 26, 2016, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the medical condition was causally related to the accepted work incident.³

On December 27, 2016 appellant requested reconsideration. With his request, he submitted additional evidence. This included a September 8, 2016 report from Dr. Raska who treated him for a closed fracture of metatarsal bone of the right foot.⁴ Appellant reported that on August 16, 2016 he was walking at work and felt a pop in his foot and could not walk. He sought treatment and was placed in a CAM-walker boot. Dr. Raska noted no focal motor or sensory deficits in the bilateral legs, normal muscle mass, edema, and severe pain to palpation of the metatarsal. He diagnosed displaced closed fracture of the second metatarsal of the left foot. Dr. Raska recommended an open reduction and internal fixation of left second metatarsal which was performed on September 16, 2016. On October 3 and 17, and November 21, 2016 he treated appellant in follow up and reported routine healing. Dr. Raska diagnosed status post open reduction and internal fixation of left second metatarsal and recommended appellant remain in the CAM-walker boot and nonweight bearing.

On December 12, 2016 Dr. Raska diagnosed closed displaced fracture of the second metatarsal bone of the left foot with routine healing. He noted that appellant reached maximum medical improvement (MMI) and was released from his care. In an undated attending physician's report, Dr. Raska noted that on August 16, 2016 appellant felt a pop in his foot and was diagnosed with second metatarsal closed fracture of the right foot.⁵ He noted with a

² Appellant filed a claim for compensation (Form CA-7) on October 22, 2016 claiming wage-loss compensation from September 6 to October 22, 2016.

³ On November 21, 2016 appellant requested a telephone hearing before an OWCP hearing representative. On December 26, 2016 he withdrew the request for an oral hearing.

⁴ This appears to be a typographical error as the claimed injury is to the left foot.

⁵ This also appears to be a typographical error as the claimed injury is to the left foot.

checkmark “yes” that appellant’s condition was caused or aggravated by an employment activity and indicated that he did a lot of walking on uneven ground. Dr. Raska noted performing surgery and postoperative care. He advised that appellant was totally disabled from September 8 to December 15, 2016.

Appellant also submitted x-rays of the left foot dated August 16 and September 1, 2016, reports from a nurse practitioner dated August 16 and September 1, 2016, and reports from Dr. Raska dated September 16 and 20, 2016, all previously of record.

In a decision dated April 4, 2017, OWCP denied modification of its October 26, 2016 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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 are 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.⁷

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 or she 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.⁸

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.⁹

ANALYSIS

It is undisputed that on August 16, 2016, while working as a park guide, appellant was walking towards the visitor center after a tour and felt a “snap” in his left foot. However, the Board finds that he did not submit medical evidence sufficient to meet his burden of proof to establish that this work incident caused or aggravated his diagnosed left foot condition.

⁶ *Supra* note 1.

⁷ *Gary J. Watling*, 52 ECAB 357 (2001).

⁸ *T.H.*, 59 ECAB 388 (2008).

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

In support of his claim appellant submitted a September 8, 2016 report from Dr. Raska. He related that on August 16, 2016 appellant was walking at work and felt a pop in his foot and could not walk. On September 16, 2016 appellant performed an open reduction and internal fixation of left second metatarsal and diagnosed closed second metatarsal fracture displaced dorsally and proximally. In reports dated September 20 to November 21, 2016, Dr. Raska noted that appellant was progressing well postoperatively. He diagnosed closed displaced fracture of the second metatarsal bone of the left foot with routine healing. Dr. Raska recommended that appellant stay in the CAM-walker boot and remain nonweight bearing. On December 12, 2016 he noted that appellant had reached MMI and was released from his care. However, Dr. Raska appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related.¹⁰ To the extent that Dr. Raska is providing his own opinion, he failed to provide a rationalized opinion regarding the causal relationship between appellant's left foot condition and the employment incident alleged to have caused or contributed to such condition.¹¹ Therefore, these reports are insufficient to meet appellant's burden of proof.

In an undated attending physician's report, Dr. Raska noted that on August 16, 2016 appellant felt a pop in his foot and was diagnosed with second metatarsal closed fracture of the right foot. He checked a box marked "yes" that appellant's condition was caused or aggravated by an employment activity and indicated that he did a lot of walking on uneven ground. The Board has held that a physician's opinion on causal relationship which consists only of checking "yes" to a form question, without explanation or rationale, is of diminished probative value and is insufficient to establish a claim.¹² Dr. Raska did not explain why walking on uneven ground would cause or contribute to appellant's diagnosed condition.

Likewise, appellant submitted an August 29, 2016 form report from Dr. Sides and an October 10, 2016 form report from Dr. Robbins. Dr. Sides noted a history of injury, diagnosed a left foot injury, and checked a box marked "yes" indicating that the left foot injury was caused or aggravated by work. Dr. Robbins treated appellant for left foot pain after an August 16, 2016 injury and diagnosed fracture of the second metatarsal bone. He also checked a box marked "yes" that appellant's condition was caused or aggravated by his employment. These reports, without further explanation or rationale with regard to causal relationship, are of diminished probative value and are insufficient to establish the claim.¹³

An October 10, 2016 attending physician's report from Dr. Mulligan is also insufficient to meet appellant's burden of proof as she specifically advised that she was not qualified to provide an opinion as to whether appellant's injury was caused or aggravated by an employment activity.

¹⁰ *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).

¹¹ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹² *D.D.*, 57 ECAB 734 (2006); *Sedi L. Graham*, 57 ECAB 494 (2006).

¹³ *Id.*

Appellant was treated by a nurse practitioner. However, the Board has held that reports from nurse practitioners¹⁴ have no probative value as nurse practitioners are not considered physicians as defined under FECA.¹⁵

The remainder of the medical evidence is of limited probative value as it does not provide a physician's opinion on causal relationship between appellant's work incident and his diagnosed left foot injury.¹⁶ For this reason, the medical evidence of record is insufficient to meet his burden of proof.

The Board notes that the record does contain an authorization for examination and/or treatment (Form CA-16) which was completed by appellant's supervisor on August 19, 2016. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.¹⁷ Although OWCP denied appellant's claim for an injury, it did not address whether he is entitled to reimbursement of medical expenses pursuant to the Form CA-16. Upon return of the case record, it should further address this issue.¹⁸

On appeal appellant disagrees with OWCP's decision denying his claim. He asserts that he submitted sufficient evidence in support of his claim and OWCP should accept his work injury. As noted above, part of appellant's burden of proof includes the submission of rationalized medical opinion evidence, supporting a causal relationship between the employment incident and the diagnosed condition. The record contains no medical evidence which provides a rationalized opinion explaining how and why his left foot injury was causally related to the August 16, 2016 work incident.

¹⁴ *Paul Foster*, 56 ECAB 208 (2004) (where the Board found that a nurse practitioner is not a "physician" pursuant to FECA).

¹⁵ *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (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). *See also Paul Foster*, 56 ECAB 208 (2004) where the Board found a nurse practitioner was not considered a physician under FECA.

¹⁶ *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁷ *See R.P.*, Docket No. 16-0498 (issued July 5, 2016); *Tracy P. Spillane*, 54 ECAB 608 (2003).

¹⁸ *L.M.*, Docket No. 16-0188 (issued March 24, 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 failed to meet his burden of proof to establish a left foot injury causally related to the accepted August 16, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2017
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