

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

C.D., Appellant)

and)

U.S. POSTAL SERVICE, WESTCHESTER)
POSTAL & DISTRIBUTION CENTER,)
White Plains, NY, Employer)

**Docket No. 17-1713
Issued: February 1, 2018**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 4, 2017 appellant filed a timely appeal from a February 10, 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 to consider the merits of this case.²

ISSUE

The issue is whether appellant met his burden of proof to establish right foot and ankle conditions causally related to the accepted December 7, 2015 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted new evidence with his appeal to the Board. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. Thus, the Board is unable to review this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

FACTUAL HISTORY

On May 11, 2016 appellant, then a 60-year-old supervisor of distribution operations, filed a traumatic injury claim (Form CA-1) alleging that on December 7, 2015 he injured his right foot and ankle while walking from the first to third floors in the performance of duty.³ He did not note on the claim form that he had stopped work.

In a development letter dated May 25, 2016, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Appellant was advised regarding the medical and factual evidence required to establish his traumatic injury claim. He was afforded 30 days to provide this information.

In response to OWCP's request appellant submitted evidence including magnetic resonance imaging (MRI) scans and hospital reports and statements from appellant, coworkers, and an employing establishment distribution operations manager. In disability certificates dated January 4 and 26, March 2, and April 22, 2016, Dr. Indu Garg, a treating Board-certified physiatrist, indicated that appellant had been under his care for a right ankle injury and was disabled from work. In the January 4, 2016 note, he indicated that appellant could return to work on January 6, 2016, however, in the January 26, 2016 note, the return to work date was extended to February 26, 2016. In the March 2, 2016 note, Dr. Garg noted that appellant could return to light-duty work for four hours per day on April 23, 2016. However, he indicated that appellant was disabled until June 30, 2016 on the April 22, 2016 disability certificate.

A February 4, 2016 letter from Dr. Sanjiv Bansal, a treating Board-certified orthopedic surgeon, reported that appellant continued to have difficulty with his right ankle and required right ankle reconstruction surgery.

On April 25, 2016 Dr. Jay Mermelstein, a treating podiatrist, diagnosed proximal peroneus brevis and posterior tibial tendon tears, small trabecular fracture, mild chronic Achilles tendinitis, pes cavus, plantar and posterior calcaneal bony spurs, hindfoot valgus/midfoot and forefoot adductus, and chronic lateral collateral and possibly subtalar ligamentous tear. He observed that appellant's foot and ankle conditions were aggravated by pushing or pulling heavy objects and periods of standing. Additionally, Dr. Mermelstein opined that appellant had a chronic condition which could be aggravated by excessive activity. He recommended modified activity and pain management.

On May 24, 2016 Dr. Chaiyaporn Kulsakdinun, a Board-certified orthopedic surgeon, advised that appellant would be out of work for weeks due to his medical condition. In a progress note dated May 25, 2016, he noted that appellant had undergone right peroneal debridement and exostectomy surgery on May 9, 2016. Dr. Kulsakdinun provided physical examination findings and noted that appellant was doing well postsurgery.

On June 3, 2016 appellant was seen by Dr. Garg who reported that appellant had been seen in January 2016 for right ankle pain, which began at work on December 7, 2015 while he

³ The record also contains a Form CA-1 dated January 12, 2016 from appellant alleging that he sustained a right ankle and foot injury on approximately October 31, 2013.

was walking. A review of the prior MRI scan revealed a proximal peroneus brevis full-thickness tendon tear with tenosynovitis with partial intrasubstance distal posterior tibial partial thickness tear. Physical findings included right ankle swelling with limited range of motion. Dr. Garg reported that appellant was status post right ankle tendon repair surgery. He indicated that appellant was totally disabled due to his recent surgery.

In a June 21, 2016 letter, Dr. Kulsakdinun advised that appellant was disabled from working for the next seven weeks.

By decision dated June 30, 2016, OWCP denied appellant's claim. It found the evidence of record was insufficient to establish a causal relationship between the diagnosed medical conditions and the accepted December 7, 2015 employment incident.

On July 1, 2016 OWCP received a June 24, 2016 report from Dr. Garg in which he opined that appellant sustained a peroneal tendon injury at work, which had been repaired by surgery approximately one month ago. A physical examination revealed limited right ankle and foot range of motion and pain.

In a July 28, 2016 report, Dr. Mermelstein repeated findings from his prior report.

On June 29 and August 2, 2016 appellant requested a review of the written record by an OWCP hearing representative.

On August 2, 2016 OWCP received a narrative report dated July 16, 2016 from Dr. Garg. Dr. Garg reported that on December 7, 2015 appellant complained of ankle and foot pain due to the excessive walking and pushing and pulling of mail equipment on December 7, 2015. He noted appellant's medical history including two prior work injuries involving appellant's right ankle and foot. Physical examination findings and findings from review of MRI scans were noted. Diagnoses included status post right peroneal tendon tear and right foot and ankle injury. A description of appellant's work activities was reported. Based on the description of the work duties, Dr. Garg opined that appellant's work duties caused the peroneus tendon tear and the significant right ankle and foot injury.

On August 9, 2016 Dr. Kulsakdinun advised that appellant was disabled from work for the next seven weeks.

By decision dated February 10, 2017, OWCP's hearing representative affirmed the denial of appellant's claim. He found the medical evidence of record was insufficient to establish a causal relationship between the diagnosed right ankle and foot conditions and the accepted December 7, 2015 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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

⁴ *Supra* note 1.

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 and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ 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.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁷ 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.⁸ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹⁰ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.¹¹ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.¹²

ANALYSIS

Appellant alleged that he sustained a right foot and ankle injuries while in the performance of duty on December 7, 2015. OWCP found the evidence of record sufficient to establish that the incident occurred as alleged. However, it also found the medical evidence of record insufficient to establish that the diagnosed conditions were causally related to the accepted December 7, 2015 employment incident. The Board finds that appellant has failed to meet his burden of proof to establish right foot and ankle conditions causally related to the accepted employment incident.

⁵ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁶ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 5.

⁸ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁹ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 5.

¹⁰ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹¹ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹² *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The record contains reports from Dr. Garg dated July 1 and 16, 2016 diagnosing a peroneal tendon injury/tendon tear. In the July 1, 2016 report, Dr. Garg observed that appellant sustained a peroneal tendon injury at work. In his subsequent July 16, 2016 report, he described appellant's work duties including those performed on December 7, 2015. Dr. Garg opined that appellant's work duties were the cause of the peroneus tendon tear as well as the significant foot and ankle injuries. The Board finds, however, that Dr. Garg failed to adequately address the issue of causal relationship in the two July 2016 reports. Dr. Garg did not explain, with medical rationale, how appellant's work duties on December 7, 2015 physiologically caused or aggravated appellant's diagnosed foot and ankle conditions.¹³ Medical reports without any rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹⁴ Thus, these reports are insufficient to establish appellant's claim.

Appellant submitted additional reports from Dr. Mermelstein, Dr. Kulsakdinun and Dr. Garg. Dr. Mermelstein on April 25 and June 24, 2016 provided examination findings and right foot and ankle diagnoses proximal peroneus brevis and posterior tibial tendon tears, small trabecular fracture, mild chronic Achilles tendinitis, pes cavus, plantar and posterior calcaneal bony spurs, hindfoot valgus/midfoot and forefoot adductus, and chronic lateral collateral and possibly subtalar ligamentous tear. Dr. Kulsakdinun diagnosed right peroneal debridement and noted exostectomy surgery. In a June 3, 2016 report, Dr. Garg reported a right ankle tendon tear based on an MRI scan. The Board has found that medical evidence which fails to offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁵ None of these physicians' reports offer an opinion as to the cause of the diagnosed conditions or attribute the diagnosed conditions to the accepted December 7, 2015 work incident. Thus, these reports from Dr. Mermelstein, Dr. Kulsakdinun, and Dr. Garg are insufficient to establish appellant's claim.

Appellant also submitted disability certificates from Dr. Garg, a February 5, 2016 disability note from Dr. Bansal, and disability notes from Dr. Kulsakdinun. The record also contains an April 20, 2016 note that appellant had been seen that day from Dr. Kulsakdinun, and a May 25, 2016 progress note describing appellant's surgery. However, these reports are also insufficient to support appellant's claim as they contained no diagnosis or opinion on causal relationship.¹⁶

The record before the Board is devoid of rationalized medical evidence establishing that appellant's right foot and ankle conditions were causally related to the accepted October 6, 2016 work incident. OWCP advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, history of

¹³ See *T.E.*, Docket No. 16-1090 (issued February 24, 2017); *L.R.*, Docket No. 16-0736 (issued September 2, 2016); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁴ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Richard A. Neidert*, 57 ECAB 474 (2006)

¹⁵ *R.E.*, Docket No. 10-0679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007); *Ellen L. Noble*, 55 ECAB 530 (2004).

¹⁶ *A.D.*, 58 ECAB 159 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

treatment, and the physician's opinion, with medical reasons, on the cause of his condition.¹⁷ 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.¹⁸ An award of compensation may not be based on surmise, conjecture, or speculation.¹⁹

On appeal appellant notes his disagreement with the denial of his claim. He argues that his on-the-job injury was timely reported and he was entitled to benefits. As discussed above, OWCP accepted that the December 7, 2015 incident occurred as alleged. It denied appellant's claim, however, because none of the physicians provided a rationalized opinion explaining how the diagnosed conditions had been caused or aggravated by the accepted December 7, 2015 employment incident. Appellant's honest belief that the February 10, 2017 employment incident caused his medical conditions, however, sincerely held, does not constitute the medical evidence necessary to establish causal relationship.²⁰

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 that his right foot and ankle conditions are causally related to the accepted December 7, 2015 employment incident.

¹⁷ See *supra* note 12.

¹⁸ *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁹ *S.S.*, 59 ECAB 315 (2008); *J.M.*, 58 ECAB 303 (2007); *Donald W. Long*, 41 ECAB 142 (1989).

²⁰ See *J.S.*, Docket No. 17-0507 (issued August 11, 2017).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 10, 2017 is affirmed.

Issued: February 1, 2018
Washington, DC

Christopher J. Godfrey, 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