

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

S.A., Appellant	)	
	)	
and	)	<b>Docket No. 18-0508</b>
	)	<b>Issued: July 10, 2018</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Hopkins, MN, 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  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On January 12, 2018 appellant filed a timely appeal from a December 28, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish an injury on November 8, 2017 in the performance of duty as alleged.

**FACTUAL HISTORY**

On November 15, 2017 appellant, then a 59-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on November 8, 2017, he experienced right foot and ankle pain while in the performance of duty. He did not stop work.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

By development letter dated November 16, 2017, OWCP requested that appellant submit additional factual and medical evidence in support of his claim, including a detailed description of the work factors to which he attributed his condition and a report from his attending physician addressing causal relationship between any diagnosed condition and the identified work incident.

Appellant received treatment at the emergency department on November 8, 2017 from Dr. Denise S. Lawe, Board-certified in emergency medicine. Dr. Lawe noted that he complained of right foot pain that occurred that day at work while he was walking. She diagnosed right foot pain and advised that an x-ray revealed only a small effusion. Dr. Lawe determined that appellant should not work for two days and placed him a short controlled ankle motion walker.

On November 10, 2017 Dr. Mark A. Ciagne, who specializes in preventive medicine obtained a history of appellant experiencing sharp pain in his right foot under the arch while delivering his route. On examination he found no further pain and normal ambulation. Dr. Ciagne diagnosed right foot pain of uncertain etiology and a work-related injury. He opined that appellant could return to work without restrictions.

By decision dated December 28, 2017, OWCP denied appellant's traumatic injury claim. It noted that he had not submitted a factual statement describing the work event to which he attributed his injury and thus had not established the occurrence of a work incident on November 8, 2017 as alleged. OWCP further found that the medical evidence of record was insufficient to establish that appellant sustained a diagnosed condition due to his employment.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>3</sup>

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether fact of injury has been established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.<sup>4</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish causal relationship between the employment incident and the alleged disability or condition for which

---

<sup>2</sup> *Id.*

<sup>3</sup> 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

<sup>4</sup> *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

compensation is claimed.<sup>5</sup> An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.<sup>6</sup>

An employee must provide detailed factual information regarding the alleged employment incident or incidents.<sup>7</sup> It must describe the specific incidents alleged to have caused an injury, when the incident occurred, and the circumstances surrounding the claimed injury.<sup>8</sup> An injury does not have to be confirmed by eyewitnesses to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action.<sup>9</sup> An employee cannot establish fact of injury if there are inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time, place, and in the manner alleged.<sup>10</sup> Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.<sup>11</sup>

### ANALYSIS

Appellant filed a traumatic injury claim alleging that he sustained a right foot and ankle injury at work on November 8, 2017. The Board finds that he has not met his burden of proof to establish that the November 8, 2017 employment incident occurred as alleged.

Appellant has not provided a statement describing any specific work activity that resulted in a right foot and ankle injury. He did not describe any specific incident occurring on November 8, 2017 or any work activity that he performed that resulted in a right foot or ankle injury. The medical evidence contained a general history of appellant experiencing right foot pain on November 8, 2017 while walking at work, but no specific details regarding how the alleged injury occurred.<sup>12</sup> As discussed, to establish the factual component of his claim, he must provide a detailed description of any alleged work activity, the time that it occurred, and the surrounding circumstances.<sup>13</sup> OWCP advised appellant on November 16, 2017 of the type of factual evidence required to establish his claim. Appellant has not, however, submitted the evidence necessary to factually establish his claim.

---

<sup>5</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>6</sup> *Id.*

<sup>7</sup> *See J.N.*, Docket No. 17-0032 (issued April 21, 2017).

<sup>8</sup> *See D.F.*, Docket No. 15-1745 (issued February 11, 2016).

<sup>9</sup> *Charles B. Ward*, 38 ECAB 667 (1987).

<sup>10</sup> *Gene A. McCracken*, 46 ECAB 593 (1995); *Mary Joan Coppolino*, 43 ECAB 988 (1992).

<sup>11</sup> *See S.P.*, 59 ECAB 184 (2007); *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

<sup>12</sup> *See H.B.*, Docket No. 16-1753 (issued March 14, 2018); *R.M.*, Docket No. 11-1921 (issued April 10, 2012).

<sup>13</sup> *See supra* note 8.

The Board accordingly finds that appellant has not met his burden of proof to establish his claim for compensation as he has not established that an employment incident occurred on November 8, 2017.<sup>14</sup> As appellant has not established an incident occurred as alleged, the medical evidence regarding causal relationship need not be addressed.<sup>15</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 not met his burden of proof to establish an injury on November 8, 2017 in the performance of duty as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2018  
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

---

<sup>14</sup> See *J.W.*, Docket No. 17-1366 (issued October 26, 2017).

<sup>15</sup> See *V.F.*, 58 ECAB 321 (2007).