United States Department of Labor
Employees' Compensation Appeals Board

F.U., Appellant	)	
and	)	**Docket No. 18-0078**
	)	**Issued: June 6, 2018**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATON SECURITY ADMINISTRATION, Atlanta, GA, 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 October 12, 2017 appellant filed a timely appeal from a July 31, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish an injury in the performance of duty on June 1, 2017.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its July 31, 2017 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On June 2, 2017 appellant, then a 43-year-old transportation security officer, filed an occupational disease claim (Form CA-2) for a strained ankle that allegedly occurred on June 1, 2017 while in the performance of duty. He recounted that he was positioned on the advanced imaging technology (AIT) at lanes one and two when a passenger came through with an anomaly in his groin area. Appellant reportedly bent down to pat the passenger's groin area, and as appellant stood up he strained his right ankle. He alleged that his ankle hurt badly as he stood on it. No additional information accompanied the claim form.

In a June 16, 2017 claim development letter, OWCP advised appellant additional evidence was needed to establish his claim. It specifically noted that there was no diagnosis of any condition resulting from the alleged injury. OWCP also requested that appellant clarify whether he was claiming an occupational disease (Form CA-2) or a traumatic injury (Form CA-1). It afforded appellant 30 days to submit the requested information.

OWCP subsequently received June 5, 2017 treatment notes from Dr. William R. Osborne Jr., a Board-certified internist, who examined appellant for "ankle pain." The treatment notes did not include a history of injury or identify a date of injury. Dr. Osborne's clinical assessment included "pain in right ankle and joints of right foot."[3] He referred appellant for an x-ray, and prescribed a nonsteroidal anti-inflammatory drug (NSAID), diclofenac sodium.[4] Dr. Osborne advised appellant to return in three days (72 hours) if he did not feel any better or if his symptoms worsened. In a separate note, he indicated that appellant was able to resume work on June 7, 2017 without restriction(s).

In a June 29, 2017 statement, appellant clarified that he was claiming a traumatic injury. He noted that he strained his ankle while "patting a passenger down." Appellant identified Dr. Osborne as the physician he first consulted following the claimed injury. He also represented that he did not have any similar disability or symptoms prior to the claimed injury.

By decision dated July 31, 2017, OWCP accepted that the June 1, 2017 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim because he had not submitted any evidence "containing a medical diagnosis in connection with the injury and/or event(s)." OWCP explained that "pain" was a symptom, not a medical diagnosis. Consequently, it found that appellant failed to establish the medical component of fact of injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial

[3] Dr. Osborne also noted that appellant had athlete's foot (tinea *pedis* of right foot) and a body mass index (BMI) of 34.0 - 34.9.

[4] Dr. Osborne also prescribed an antifungal cream (ketoconazole) for appellant's athlete's foot.

[5] *See supra* note 1.

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.[6]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[7] The second component is whether the employment incident caused a personal injury.[8] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[9]

ANALYSIS

Appellant claimed to have injured his right ankle on June 1, 2017 while patting down a passenger. OWCP accepted that the June 1, 2017 employment incident occurred as alleged, but denied his claim because the evidence of record did not include a medical diagnosis in connection with the accepted employment incident. The Board finds that appellant failed to establish the medical component of fact of injury.

Dr. Osborne's June 5, 2017 treatment notes did not include a specific history of injury or even identify a date of injury. He examined appellant for complaints of "ankle pain," and provided an assessment of "pain in right ankle and joints of right foot." As OWCP correctly noted in its July 31, 2017 decision, "pain" is a symptom, not a medical diagnosis.[10] Accordingly, Dr. Osborne's finding of right ankle and/or foot pain is insufficient to satisfy appellant's burden of proof with respect to satisfying the medical component of fact of injury.[11] There is no evidence of record that establishes a medical diagnosis in connection with the accepted employment incident. Consequently, appellant failed to establish that he sustained an injury in the performance of duty on June 1, 2017.

[6] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *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 factor(s) 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 factor(s). *Id.*

[7] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *John J. Carlone*, 41 ECAB 354 (1989).

[9] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[10] Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

[11] *Id.*; *see Deborah L. Beatty*, 54 ECAB 340, 341 (2003).

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 in the performance of duty on June 1, 2017.

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 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