

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

I.S., Appellant	)	
	)	
and	)	Docket No. 18-0606
	)	Issued: August 2, 2019
U.S. POSTAL SERVICE, POST OFFICE,	)	
Saint Louis, MO, 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  
JANICE B. ASKIN, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On January 30, 2018 appellant filed a timely appeal from a November 13, 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.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a right foot condition causally related to the accepted July 30, 2016 employment incident.

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

<sup>2</sup> The Board notes that following the November 13, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 1, 2016 appellant, then a 46-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 30, 2016 he experienced right heel pain when carrying mail on his route while in the performance of duty.

In an August 1, 2016 work activity status report, Dr. Anjum Razzaque, a Board-certified internist, diagnosed right plantar fasciitis. She indicated that appellant could return to modified work with restrictions of only ground level work, no climbing ladders, and no driving work vehicles. In an August 9, 2016 report, Dr. Razzaque further related appellant's complaints of right heel pain after activity and associated symptoms of limping and localized tenderness, exacerbated with direct pressure and weight-bearing. She noted that appellant was off work. Upon physical examination of appellant's foot, Dr. Razzaque reported no tenderness and no crepitus on palpation with no warm masses. Range of motion was full and normal bilaterally. Dr. Razzaque diagnosed right plantar fasciitis. She authorized appellant to return to modified work activity and provided a work status note with specific restrictions.

In an August 12, 2016 examination note, Dr. Daniel Thouvenot, a podiatric specialist, recounted appellant's complaints of right heel pain. He reviewed appellant's history and noted that his occupation required prolonged standing. Upon physical examination of appellant's right foot, Dr. Thouvenot observed pain to palpation to the insertion of the plantar fasciitis of both feet. Range of motion of the foot structure, subtalar, metatarsal, and metatarsal-phalangeal joint were within normal limits. Dr. Thouvenot submitted an August 12, 2016 work excuse note, which indicated that appellant could return to work with walking restrictions.

In an August 24, 2016 attending physician's report (Form CA-20), Dr. Thouvenot noted a July 30, 2016 date of injury. He related that appellant complained of pain after a mail route and that standing and walking worsened the pain. Dr. Thouvenot reported a diagnosis of right plantar fasciitis fibromatosis and right foot calcaneal spur. He checked a box marked "yes," which indicated that appellant's condition was caused or aggravated by the employment activity. Dr. Thouvenot explained: "[appellant] states conditions were due to walking and standing." He reported that appellant was partially disabled beginning August 12, 2016. Dr. Thouvenot further reported in an August 31, 2016 work status note that appellant could return to work without restrictions.

By decision dated September 20, 2016, OWCP denied appellant's claim. It accepted the July 30, 2016 employment incident and the diagnosis of right plantar fasciitis, but denied appellant's claim as the medical evidence of record was insufficient to establish that his right foot condition was causally related to the accepted employment incident.

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<sup>3</sup> Docket No. 17-0852 (issued October 6, 2017).

On October 4, 2016 OWCP received an “amended” August 1, 2016 report, dated September 30, 2016, from Dr. Razzaque, who noted that appellant presented with right heel pain. Dr. Razzaque also noted an acute musculoskeletal injury date of July 30, 2016. She reported that this injury was the result of “walking and felt a sharp shooting pain in right foot.” Dr. Razzaque related that appellant noticed pain in his right heel while walking his route over the prior two weeks, which had gradually worsened. Upon physical examination of appellant’s right foot, she reported no tenderness except the insertion of the plantar fascia and no masses, no crepitus, and no nodularity along the plantar fascia. Range of motion and strength was full. Dr. Razzaque related that an x-ray examination of appellant’s right heel showed no plantar spur or fracture. She diagnosed right plantar fasciitis. Dr. Razzaque authorized appellant to return to work.

OWCP also received an August 31, 2016 report by Dr. Thouvenot, who noted that appellant’s pain to the insertion of the plantar fasciitis had improved. Dr. Thouvenot reported that an x-ray examination of appellant’s right foot showed inferior calcaneal spurring, but no fracture, stress fracture, or dislocations. Sensory testing of the lower extremities was intact. Dr. Thouvenot diagnosed plantar fascial fibromatosis, right foot calcaneal spur, right ankle synovitis and tenosynovitis, and right foot pain.

On January 13, 2017 appellant requested reconsideration. He also resubmitted Dr. Thouvenot’s August 24, 2016 Form CA-20.

By decision dated February 16, 2017, OWCP denied appellant’s reconsideration request, pursuant to 5 U.S.C. § 8128(a), finding that his reconsideration request neither raised substantive legal questions nor included new and relevant evidence sufficient to warrant further merit review of appellant’s claim.

Appellant filed an appeal to the Board.

By decision dated October 7, 2017, the Board affirmed the September 20, 2016 decision, which denied appellant’s traumatic injury claim, finding that he had not established that he sustained a right foot injury causally related to the accepted July 30, 2016 employment incident. The Board also found that OWCP had improperly denied appellant’s January 13, 2017 request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a) because OWCP had not considered the new medical evidence submitted after the September 20, 2016 decision. OWCP’s February 16, 2017 decision was therefore set aside and the case was remanded for OWCP to review the new and probative medical evidence.

By decision dated November 13, 2017, OWCP denied appellant’s traumatic injury claim finding that the medical evidence of record was insufficient to establish that his right foot condition was causally related to the accepted July 30, 2016 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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

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<sup>4</sup> *Supra* note 1.

United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>5</sup> that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup> 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.<sup>7</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.<sup>12</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>13</sup> 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).<sup>14</sup>

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<sup>5</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *G.D.*, Docket No. 19-0265 (issued May 20, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *R.B.*, Docket No. 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>9</sup> *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>10</sup> *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 8.

<sup>11</sup> *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>12</sup> *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>13</sup> *M.S.*, Docket No. 19-0189 (issued May 14, 2019).

<sup>14</sup> *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

## ANALYSIS

The Board finds that appellant has not met his burden of proof to establish causal relationship between his right foot condition and the accepted July 30, 2016 employment incident.<sup>15</sup>

Following OWCP's September 20, 2016 denial decision, it received an "amended" August 1, 2016 report dated September 30, 2016 from Dr. Razzaque. Dr. Razzaque indicated that appellant had worked as a postal worker for the past 17 years and noted a July 30, 2016 acute musculoskeletal injury. She reported: "this is the result of 'was walking and felt a sharp shooting pain in right foot.'" Dr. Razzaque related that appellant experienced gradually worsening right heel pain while walking his route over the last two weeks. She reported that examination of appellant's right foot showed no masses and no crepitus. Range of motion was full. Dr. Razzaque diagnosed right plantar fasciitis.

Although Dr. Razzaque attributed appellant's right heel and foot condition to "walking" and accurately noted a July 30, 2016 date of injury, the Board finds that her report does not contain sufficient explanation, based on medical rationale, of how "walking" caused or contributed to his right foot condition. Dr. Razzaque did explain the pathophysiological process of how walking on July 30, 2016 would have caused his right foot condition.<sup>16</sup> A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.<sup>17</sup> Because Dr. Razzaque did not provide a reasoned opinion explaining how the July 30, 2016 employment incident caused or contributed to his right foot condition, the Board finds that this report is insufficient to establish his claim.

In an August 31, 2016 report, Dr. Thouvenot noted appellant's complaints of right heel pain. He reported that an x-ray examination of appellant's right foot showed inferior calcaneal spurring, but no fracture, stress fracture, or dislocations. Dr. Thouvenot diagnosed plantar fascial fibromatosis, right foot calcaneal spur, right ankle synovitis and tenosynovitis, and right foot pain. He did not, however, opine on whether appellant's right foot conditions resulted from the July 30, 2016 employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>18</sup>

On appeal appellant alleges that Dr. Razzaque diagnosed an acute musculoskeletal condition as a result of him walking on his mail route. As explained above, however,

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<sup>15</sup> The Board found in its prior October 6, 2017 decision that appellant had failed to establish that he sustained a right foot condition causally related to an accepted July 30, 2016 employment incident. The Board's review of the previously submitted medical evidence of record is *res judicata* and, therefore, need not be addressed again in this decision. See *M.A.*, Docket No. 17-0352 (issued June 16, 2017); *R.L.*, Docket No. 15-1010 (issued July 21, 2015).

<sup>16</sup> See *B.T.*, Docket No. 13-0138 (issued March 20, 2013).

<sup>17</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>18</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Dr. Razzaque's reports fail to contain a well-rationalized medical opinion to establish causal relationship. In order to obtain benefits under FECA, an employee 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.<sup>19</sup> Because appellant has failed to provide such evidence demonstrating that his diagnosed right foot condition was causally related to the accepted July 30, 2016 employment incident, he has not met his burden of proof to establish his traumatic injury claim.

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 that his right foot condition is causally related to the accepted July 30, 2016 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 13, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>19</sup> *Supra* note 5.