

ISSUE

The issue is whether appellant has met his burden of proof to establish a right foot condition causally related to the accepted October 5, 2013 employment incident.

FACTUAL HISTORY

On October 25, 2013 appellant, then a 59-year-old housekeeping aide, filed a traumatic injury claim (Form CA-1) alleging that he injured his left thigh and right foot on October 5, 2013 when he slipped and fell on a wet floor while in the performance of duty. He stopped work on October 25, 2013.

On October 21, 2013, appellant was treated in an emergency room by Tania Centola, a registered nurse. Ms. Centola noted a history of injury that transpired on October 5, 2013 while stripping a floor at work he fell. Appellant reported left upper thigh pain.

In a note dated October 25, 2013, Jenny P. Sena, a physician assistant, reported an October 5, 2013 date of injury when appellant fell on a waxed floor. Appellant reported right foot pain in the same location where he had surgery in 2009. In a duty status report (Form CA-17) dated November 4, 2013, Ms. Sena diagnosed a sprain and noted that he was out of work from October 25 to November 4, 2013 due to a right foot injury and surgery. In another Form CA-17, also dated November 4, 2013, she noted clinical findings of a sprain and returned appellant to full duty.

On April 9, 2014 appellant filed a claim for compensation (Form CA-7) claiming compensation for leave without pay for the period March 13 to 28, 2014.

In an April 14, 2014 development letter, OWCP advised appellant that when his claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work. The claim was administratively approved to allow payment for limited medical expenses, but the merits of the claim had not been formally adjudicated. OWCP requested that appellant submit factual and medical information, including a comprehensive report from his physician regarding how a specific employment incident contributed to his alleged injury. It afforded him 30 days to submit the necessary evidence.

Appellant was treated by Dr. Chow H. Ng, a Board-certified physiatrist, on December 18, 2013 for complex regional pain syndrome of the posterior right ankle associated with right talus exostosis with external neurolysis on July 30, 2010. Dr. Ng reported pain and decreased range of motion of the right ankle and difficulty negotiating stairs. He recommended continued physical therapy and returned appellant to work with restrictions.

On March 14, 2014 Dr. Dorothy Norwood, a Board-certified emergency room physician, saw appellant for a fitness-for-duty examination. Appellant reported that on October 5, 2013 he fell at work while waxing a floor and experienced right foot pain. He noted that his history was significant for an injury that occurred in 2001 when an electric power jack crushed his right foot. Appellant underwent surgery on his foot in 2009 and 2010. He reported being off work from October 25 to November 4, 2013 and returning to full duty and stopping again on December 26, 2013. Findings on examination revealed appellant ambulating with a cane, healed scars on his right foot secondary to surgery, decreased range of motion in all quadrants, and pain

upon palpation of the lumbar spine. A March 4, 2014 magnetic resonance imaging (MRI) scan of the right ankle revealed mild thickening of the Achilles tendon with minimal peri-fascial and heel pad edema. X-rays of the lumbar spine dated February 20, 2014 revealed multilevel degenerative disc disease. Dr. Norwood diagnosed right foot pain, secondary to old healed surgeries, no residuals from the reported fall of October 5, 2013, and low back pain secondary to degenerative disc disease. She opined that appellant was incapacitated secondary to degenerative disc disease, but not due to foot pain. Dr. Norwood noted residual chronic changes secondary to an old trauma of the right foot and two surgeries. In an attending physician's report (Form CA-20) dated March 31, 2014, Dr. Norwood diagnosed right foot pain secondary to healed surgery and back pain secondary to degenerative disc disease. She noted that there was evidence of a preexisting injury and surgery to the right foot. Dr. Norwood checked a box marked "no," that the condition was not caused or aggravated by an employment activity.

In a statement dated April 21, 2014, appellant indicated that the delay in reporting his injury was due to his physician being on vacation.

By decision dated October 20, 2017, OWCP accepted that the October 5, 2013 employment incident occurred as alleged and that a medical condition had been diagnosed. However, it denied appellant's traumatic injury claim finding that he had not met his burden of proof to establish causal relationship between the diagnosed right foot sprain and low back pain and the accepted October 5, 2013 employment incident.

An employing establishment incident report dated October 18, 2013 noted that on October 5, 2013 appellant slipped and fell on a wet floor. He reported injuring his legs.

Appellant submitted a duplicate Form CA-1 which provided an additional witness statement from C.F. who reported seeing appellant fall on his left side while scraping a passageway at work.

In an August 2018 statement, appellant indicated that he was treated at the employing establishment hospital for his injury by Dr. Evan Braithwaite, a Board-certified internist. He reported not sustaining any injuries between the initial date of injury and the date he reported the employment injury. Prior to the injury appellant was performing his job full time.

An x-ray of the lumbar spine dated August 3, 2018 revealed mild rotatory dextroscoliosis associated with prominent multilevel degenerative changes which were most severe at L2-3 through L5-S1 levels. An x-ray of the pelvis dated August 3, 2018 revealed no acute abnormality. A lumbar spine MRI scan dated August 19, 2018 revealed mild spondylolisthesis and multilevel degenerative change. An August 19, 2018 MRI scan of the hips revealed a small amount of degenerative changes in both hips.

On September 10, 2018 appellant through counsel, requested reconsideration.

By decision dated November 30, 2018, OWCP denied modification of the October 20, 2017 decision.

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 United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA,⁵ 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.⁶ 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.⁸ 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.⁹ The second component is whether the employment incident caused a personal injury.¹⁰ 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 employment incident.¹¹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹² A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.¹³ 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 the specific employment incident.¹⁴

⁴ *Id.*

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

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁹ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹² *T.H.*, *supra* note 8 at 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹³ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

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

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁵

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right foot condition causally related to the accepted employment incident.

On December 18, 2013 Dr. Ng treated appellant for complex regional pain syndrome of the posterior right ankle associated with right talus exostosis with external neurolysis on July 30, 2010. However, his report is insufficient to establish the claim as the physician did not provide a history of injury¹⁶ or specifically address whether appellant's employment activities on October 5, 2013 had caused or aggravated a diagnosed medical condition.¹⁷ Rather, the evidence pertained to an unrelated surgery on July 30, 2010.

In a March 14, 2014 fitness-for-duty examination, Dr. Norwood noted that appellant sustained an injury in 2001 when an electric power jack crushed his right foot and he underwent surgery. Appellant reported falling at work on October 5, 2013 while waxing a floor and experienced right foot pain. However, Dr. Norwood did not support causal relationship. Rather, she diagnosed right foot pain, secondary to an old trauma and surgeries of the right foot and found no residuals from the reported fall of October 5, 2013. Dr. Norwood further noted that appellant experienced low back pain secondary to degenerative disc disease and opined that he was incapacitated secondary to degenerative disc disease and not foot pain. Therefore, this report is insufficient to meet his burden of proof.

Similarly, in an attending physician's report (Form CA-20) dated March 31, 2014, Dr. Norwood diagnosed right foot pain secondary to healed surgery and back pain secondary to degenerative disc disease. She noted that there was evidence of a preexisting injury and surgery to the right foot. Dr. Norwood did not support causal relationship as she checked a box marked "no," that the condition was not caused or aggravated by an employment activity. This report of her does not support causal relationship.

Appellant submitted an x-ray of the lumbar spine dated August 3, 2018, an x-ray of the pelvis dated August 3, 2018, a lumbar MRI scan dated August 19, 2018, and an August 19, 2018 MRI scan of the right hip. The Board has held that reports of diagnostic tests lack probative value

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹⁶ *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).

¹⁷ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018) (medical evidence which does not offer any opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship).

as they do not provide an opinion on causal relationship between his employment duties and a diagnosed condition.¹⁸

The treatment records from Ms. Centola, a registered nurse, and Ms. Sena, a physician assistant, are insufficient to satisfy appellant's burden of proof as neither individual is considered a physician as defined under FECA.¹⁹

The Board thus finds that appellant has not submitted sufficient medical evidence and therefore has not met his burden of proof to establish a right foot condition causally related to the accepted October 5, 2013 employment incident.

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 a right foot condition causally related to the accepted employment incident.

¹⁸ See *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

¹⁹ 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. See *id.* at § 8102(2); *M.M.*, Docket No. 16-1617 (issued January 24, 2017); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA). See also *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board