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

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| **R.D., Appellant** | ) | |
| **and** | ) | **Docket No. 18-1551** |
| | ) | **Issued: March 1, 2019** |
| **U.S. POSTAL SERVICE, POST OFFICE, Amherst, NY, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On August 6, 2018 appellant filed a timely appeal from a July 11, 2018 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.

### ***ISSUE***

The issue is whether appellant has met his burden of proof to establish a left foot condition causally related to the accepted October 22, 2016 employment incident.

### ***FACTUAL HISTORY***

On October 24, 2016 appellant, then a 56-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 22, 2016 while walking at work he "felt a slap to my left calf, like a pop" and his left foot became swollen. He stopped work on October 24, 2016.

[1] 5 U.S.C. § 8101 *et seq.*

Appellant's supervisor, C.R., asserted that appellant had provided conflicting statements of the alleged work incident.

Appellant was treated in immediate care by Dr. Jerry Ulatowski, a Board-certified pediatrician, on October 24, 2016 for left ankle pain. He reported that on October 22, 2016 he was "walking on his mail route when he felt something hit him in the back of the left ankle" and indicated that "it felt like someone came up and slapped me really hard in the back of the leg." Appellant finished his mail route, but he had not returned to work since October 22, 2016. He reported having previously sustained an Achilles tendon rupture in December 2015. At that time he had sought treatment from Dr. Jude A. Violante, a podiatrist, who placed him in a boot and cleared him to return to regular duties in August 2016. Dr. Ulatowski noted findings on examination of limited range of motion of the foot, ankle, and knee as well as tenderness over the distal Achilles insertion point.

An October 24, 2016 x-ray of the left ankle revealed diffuse swelling around the distal aspect of the Achilles, possibly tendinosis. Dr. Violante diagnosed left ankle pain, Achilles involvement, rupture or tear. In a prescription note dated October 24, 2016, Dr. Violante noted that appellant would be off work until further notice. In duty status reports (CA-17 forms) dated November 7 and 14, 2016, he diagnosed ruptured left Achilles and noted appellant was totally disabled.

An attending physician's report (Form CA-20) from a physician assistant, dated October 24, 2016, noted a diagnosis of left ankle pain and it was noted by checking a box marked "yes" that appellant's condition was caused or aggravated by an employment activity. The physician assistant also noted appellant's history was significant for a healed Achilles rupture of the left ankle.

In an authorization for examination and/or treatment (Form CA-16) dated October 25, 2016, D.J., an employing establishment official, authorized office and/or hospital treatment as medically necessary for the effects of appellant's injury.

In an undated statement, received on November 7, 2016, appellant reported initially thinking he was hit in the back of his left calf as he felt a "pop" in his calf. He noted looking down and saw loose concrete and thought it flipped up and hit him.

In a development letter dated November 14, 2016, OWCP noted that the evidence submitted was insufficient to establish that appellant actually experienced the employment incident alleged to have caused the injury and that no diagnoses of a condition resulting from his injury had been provided. It further requested that appellant submit additional factual and medical information, including a comprehensive medical report from his treating physician, regarding how specific work factors contributed to his claimed left ankle condition. OWCP requested that appellant respond to a questionnaire to substantiate the factual elements of his claim. It afforded him 30 days to submit the necessary evidence. OWCP also requested that the employing establishment explain the employing establishment's policies and procedures for proper footwear.

A magnetic resonance imaging (MRI) scan of appellant's left foot dated November 2, 2016 revealed a rupture of the Achilles tendon from the calcaneal attachment with fibers retracted nine millimeters and mild mid-foot osteoarthritis.

On November 28, 2016 appellant provided a narrative statement in which he indicated that his injury occurred while delivering mail on his assigned route at approximately 2:00 p.m. He reported walking across the driveway and "felt a slap to the back of my left calf" and looked down to see loose concrete. Appellant thought he was hit by concrete. As soon as the incident occurred, he called his station manager to notify him of the injury. After the incident, appellant felt a throbbing sensation in his left calf and returned to his truck and finished his route.

On November 7, 2016 Dr. Violante noted that the November 2, 2016 MRI scan was positive for a complete rupture of the Achilles tendon. He recommended surgical intervention and noted that appellant was totally disabled. In a report dated December 12, 2016, Dr. Violante provided treatment and noted a ruptured Achilles tendon. In duty status reports (CA-17 forms) dated December 14, 2016 and January 12, 2017, he diagnosed ruptured Achilles on the left and recommended surgical intervention and advised that appellant was totally disabled.

By decision dated January 26, 2017, OWCP denied appellant's claim, finding that he had not met his burden of proof to establish that his claimed medical condition was causally related to the accepted October 22, 2016 employment incident.

On February 10, 2017 appellant requested reconsideration and submitted additional medical evidence.

In a report dated February 9, 2017, Dr. Violante noted first treating appellant for his injury on October 24, 2016. He opined that, as a daily mail carrier, constant pounding on concrete, stairs, and uneven surfaces had led to the weakening of the Achilles tendon resulting in the injury. Dr. Violante reported treating appellant in the past for a partial tear of the Achilles tendon, but opined that the incident on October 22, 2016 in which he stepped "on uneven broken concrete caused the complete tear of his Achilles tendon."

By decision dated May 16, 2017, OWCP denied modification of its prior decision. It found that the report from Dr. Violante dated February 9, 2017 failed to provide a well-reasoned explanation of how appellant's work incident directly caused or aggravated his medical condition. OWCP further noted that Dr. Violante had not differentiated the claimed injury from the symptoms of his preexisting injuries.

On June 29, 2017 appellant requested reconsideration and submitted additional medical evidence.

In a report dated June 8, 2017, Dr. Violante noted treating appellant for insertional Achilles tendinitis of the left foot for a year. He noted that on October 22, 2016 appellant sustained a traumatic event to his left foot when he stepped onto broken/uneven concrete while delivering his mail route and felt a strange sensation in the back of his left leg. Dr. Violante diagnosed a complete rupture of appellant's Achilles tendon of the left foot as confirmed by the MRI scan.

By decision dated September 26, 2017, OWCP denied appellant's request for reconsideration as the evidence submitted was insufficient to warrant a merit review.

On December 8, 2017 appellant requested reconsideration.

Dr. Violante noted in a December 5, 2017 report that on October 22, 2016 appellant was delivering his mail route when he stepped on broken concrete causing additional stress to his left tendon. He noted previously treating appellant for a partial tear of the left tendon. Dr. Violante opined, however, that the October 22, 2016 employment incident caused a complete tendon tear.

By decision dated March 6, 2018, OWCP denied modification of its May 16, 2017 decision.

In a subsequent statement dated March 22, 2018, appellant again indicated the factual aspects of the accepted employment incident.

On April 13, 2018 appellant requested reconsideration.

In an undated statement, Dr. Violante reviewed appellant's statement and the pictures of the area where the employment injury occurred. He opined that when appellant traversed the broken stretch of driveway he stepped in such a way that placed additional stress on his left tendon causing a complete tear. Dr. Violante noted that appellant was previously treated for a partial tear, but he opined that the traumatic incident of October 22, 2016 caused a complete tendon tear.

By decision dated July 11, 2018, OWCP denied modification of its March 6, 2018 decision.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA,[2] 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.[3] 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.[4]

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

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

[4] *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).

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.[5] 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.[6] The second component is whether the employment incident caused a personal injury.[7] 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.[8]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[9] 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.[10] 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).[11]

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.[12]

## ***ANALYSIS***

The Board finds that appellant has not met his burden of proof to establish a left foot condition causally related to the accepted October 22, 2016 employment incident.

Appellant was initially treated by Dr. Ulatowski on October 24, 2016 who diagnosed left ankle pain, Achilles involvement, and rupture or tear. He repeated the history of injury as reported by appellant, but he did not provide his own opinion regarding whether appellant's condition was work related. The mere recitation of a patient's history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.[13]

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

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

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

[8] *D.D.*, Docket No. 18-0648 (issued October 15, 2018); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[9] *T.H.*, *supra* note 5 at 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] *Id.*

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

[13] *See J.G.*, Docket No. 17-1382 (issued October 18, 2017).

Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's report is of limited probative value.[14] Therefore, this report of Dr. Ulatowski is insufficient to meet his burden of proof.

In a notes dated October 24, November 7 and 14, 2016, Dr. Violante diagnosed ruptured left Achilles and noted that appellant was totally disabled. However, in these notes, Dr. Violante did not provide an opinion as to the pathophysiological cause of the total rupture of the left Achilles. 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.[15] These reports, therefore, are insufficient to establish appellant's claim.

In reports dated November 7, December 12 and 14, 2016, January 12, February 9, June 8, and December 5, 2017, Dr. Violante consistently diagnosed a rupture of the Achilles tendon. In these reports, he provided physical examination findings and recommended surgical intervention and noted that appellant was totally disabled. Dr. Violante noted that the diagnosed condition was related to appellant's employment incident, but he did not provide a rationalized opinion regarding the causal relationship between appellant's ruptured Achilles and the October 22, 2016 work incident.[16] The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition or disability was related to employment.[17] Therefore these reports are insufficient to establish appellant's claim.

In an undated statement, Dr. Violante noted his review of pictures of the area where the employment incident occurred and noted appellant's history of injury. He noted that due to a broken stretch of driveway that appellant stepped in such a way that it placed additional stress on his left tendon causing a complete tear. However, Dr. Violante did not specifically explain how appellant had stepped differently than a normal step and how that act was sufficient to result in the diagnosed condition. A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident or work factors were sufficient to result in the diagnosed medical condition is insufficient to meet a claimant's burden of proof to establish a claim.[18] Therefore this report is insufficient to establish appellant's claim.

An attending physician's report (Form CA-20) from a physician assistant dated October 24, 2016 diagnosed left ankle pain. The Board has held that treatment notes signed by a physician assistant[19] are not considered medical evidence as these providers are not considered physicians

[14] *See A.B.*, Docket No. 16-1163 (issued September 8, 2017).

[15] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[16] *See id*.

[17] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[18] *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

[19] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (reports of a physician assistant have no probative value as medical evidence).

under FECA[20] and are not competent to render a medical opinion. Thus, this evidence is not sufficient to meet appellant's burden of proof.

An x-ray of the left foot dated October 24, 2016 and the November 2, 2016 MRI scan of the left foot are of limited probative value. Diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[21] Thus, this evidence is insufficient to meet his burden of proof.

On appeal appellant asserts that he submitted sufficient medical information to establish causal relationship. As noted, appellant has not submitted sufficiently rationalized medical evidence to meet his burden of proof to establish his claim.[22]

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 left foot condition causally related to the accepted October 22, 2016 employment incident.

[20] *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

[21] *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[22] The Board notes that the employing establishment executed a Form CA-16 on October 25, 2016 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. *L.D.*, Docket No. 16-1289 (issued December 8, 2016).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the July 11, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 2019
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