

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

S.D., Appellant)	
)	
and)	Docket No. 18-1708
)	Issued: May 8, 2019
DEPARTMENT OF JUSTICE, BUREAU OF)	
PRISONS, Bruceton Mills, WV, 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 September 11, 2018 appellant filed a timely appeal from an August 20, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ Together with his appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated March 11, 2019, the Board denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 18-1708 (issued March 11, 2019).

² 5 U.S.C. § 8101 *et seq.*

³ Following the issuance of OWCP's August 20, 2018 decision, appellant submitted new 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 additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a left ankle injury causally related to the accepted June 15, 2018 employment incident.

FACTUAL HISTORY

On June 18, 2018 appellant, then a 43-year-old utility systems operator/special operations response team operator, filed a traumatic injury claim (Form CA-1) alleging a left ankle injury on June 15, 2018 due to twisting his ankle while running in formation as part of a weapons certification activity while in the performance of duty. He stopped work on June 15, 2018 and received continuation of pay (COP).⁴

In a development letter dated July 18, 2018, OWCP requested that appellant submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to how the reported employment incident caused or aggravated a medical condition. It afforded him 30 days to submit such evidence.

Appellant subsequently submitted a June 15, 2018 report of John Huber, a physician assistant. Mr. Huber reported physical examination findings and diagnosed sprain of other ligament of left ankle (initial encounter).

The findings of June 15, 2018 x-ray testing of appellant's left ankle contained a "conclusion" of soft tissue swelling with no acute osseous pathology. X-ray testing of his left foot on the same date revealed a heel spur with no acute osseous pathology.

In a June 20, 2018 report, Dr. William Mitchell, an attending Board-certified family practitioner, indicated that he approved appellant's request to remain off work until seen by an orthopedic specialist as directed by Mr. Huber.

In an August 14, 2018 note, Dr. Benjamin Moorehead, an attending Board-certified orthopedic surgeon, indicated that appellant had an "associated diagnosis" of "sprain of left ankle, unspecified ligament, initial encounter." Appellant also submitted a progress note dated August 14, 2018 by Dr. Moorehead, in which he reported physical examination findings and his impression of left lateral ankle sprain.

By decision dated August 20, 2018, OWCP denied appellant's claim for a June 15, 2018 employment injury, finding that he had not met his burden of proof to establish the medical component of fact of injury. It explained that he had established that he twisted his left ankle while running at work on June 15, 2018 as alleged. However, appellant had not submitted a probative medical report showing that a medical condition was diagnosed in connection with the accepted employment incident.

⁴ Appellant was assigned to Priscilla Stilwell, a COP registered nurse sponsored by OWCP. In a July 2, 2018 report, Ms. Stilwell indicated that appellant reported injuring his left ankle/left Achilles tendon while running a drill at work on June 15, 2018.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are 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 the fact of injury has been established. There are two components involved in establishing the fact of injury. 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. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established employment factors.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left ankle injury causally related to the accepted June 15, 2018 employment incident.

In support of his claim, appellant submitted a June 15, 2018 report of Mr. Huber, an attending physician assistant. Appellant also submitted a July 2, 2018 report of Ms. Stilwell, a registered nurse. The Board has held, however, that health care providers such as physician assistants and nurses are not considered physicians as defined under FECA and their reports do

⁵ *Supra* note 2.

⁶ *E.S.*, Docket No. 18-1750 (issued March 11, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *D.J.*, Docket No. 18-0620 (issued October 10, 2018).

⁸ *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁹ *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

¹⁰ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

not constitute competent medical evidence.¹¹ Therefore, these reports are of no probative value and are insufficient to meet appellant's burden of proof.

The findings of a June 15, 2018 x-ray scan of appellant's left ankle showed soft tissue swelling with no acute osseous pathology, and the findings of x-ray testing of his left foot on the same date revealed a heel spur with no acute osseous pathology. These diagnostic test results are insufficient to establish appellant's claim because the Board has held that diagnostic testing reports lack probative value as they do not provide an opinion on the relationship between the accepted employment incident and a diagnosed condition.¹²

In a June 20, 2018 report, Dr. Mitchell indicated that he approved appellant's request to be off work until seen by an orthopedic specialist as directed by Mr. Huber. In an August 14, 2018 note, Dr. Moorehead indicated that appellant had an "associated diagnosis" of "sprain of left ankle, unspecified ligament, initial encounter." While these reports constitute medical evidence, they do not provide an opinion on causal relationship between the diagnosed condition and the accepted June 15, 2018 employment incident. As such, they are of no probative value¹³ Appellant also submitted an August 14, 2018 progress note of Dr. Moorehead. However, this report is of no probative value because it does not provide an opinion on causal relationship.¹⁴

As the medical evidence of record does not contain a rationalized opinion on causal relationship, the Board finds that appellant has not met her burden of proof.

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 ankle injury causally related to the accepted June 15, 2018 employment incident.

¹¹ See *M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *P.S.*, Docket No. 17-0598 (issued June 23, 2017); *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.

¹² See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *Id.*

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 8, 2019
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