United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 19-0951**
	)	**Issued: October 24, 2019**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS & BORDER PROTECTION, Wilcox, AZ, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 1, 2019 appellant, through counsel, filed a timely appeal from a February 4, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id*. An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that following the February 4, 2019 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 additional evidence for the first time on appeal. *Id*.

ISSUE

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include additional right ankle and foot conditions as causally related to the accepted March 22, 2017 employment injury.

FACTUAL HISTORY

On March 31, 2017 appellant, then a 29-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on March 22, 2017 he injured his lower leg on an obstacle course while in the performance of duty. He asserted that he suffered rope burn, which subsequently became infected. On the reverse side of the claim form, the employing establishment indicated that the alleged injury occurred in the performance of duty and that appellant did not stop work.

Appellant initially received medical treatment from a Federal Law Enforcement Training Centers' (FLETC) employee health unit. In a March 24, 2017 treatment note, Dr. Lisa Perkowski, a Board-certified internist, recounted appellant's complaints of pain to the bilateral Achilles area. She indicated that appellant sustained wounds to his bilateral Achilles area from a dry rope climb on an obstacle course two days ago. Appellant noted that his wound areas were "weeping" onto his socks and sheets the past two days. Dr. Perkowski reported examination findings of steady gait and dressings in place of the wound. She diagnosed second-degree friction burns to the bilateral lower extremities and recommended that appellant be restricted from all physical activities.

Appellant continued to receive medical treatment from the health unit and submitted examination notes dated March 27 to 31, 2017. Dr. Perkowski recounted appellant's continued complaints of throbbing right leg pain made worse with putting pressure on it. She indicated that appellant's wounds were healing, but the surrounding tissue near the right ankle area was swollen. Dr. Perkowski diagnosed second-degree friction burns to the posterior, bilateral lower extremities and early cellulitis of the right lower extremity. She recommended that appellant refrain from all physical training activities.

Appellant submitted a March 30, 2017 authorization for examination and/or treatment (Form CA-16), which noted a date of injury of March 22, 2017 and described appellant's injury as syncope, fatigue, and skin infection.

In health unit notes dated April 3 and 5, 2017, Brenda Perez, a registered nurse, indicated that appellant no longer complained of any radiating leg pain. She reported right leg examination findings of decreased redness, swelling, and drainage and no tenderness to light touch. Ms. Perez diagnosed right lower leg wounds and authorized appellant to participate in all physical training activities with no restrictions.

On April 12, 2017 appellant received medical treatment in urgent care from Becki Shumaker, a nurse practitioner, for complaints of right ankle and foot pain. Ms. Shumaker reviewed appellant's history and conducted a physical examination. Discharge instructions showed that appellant was diagnosed with right foot tendinitis.

An April 12, 2017 right foot x-ray examination showed mild hallux valgus, small plantar calcaneal heel spur, and enthesophyte formation at the insertion of the Achilles tendon.

On April 14, 2017 appellant began to receive medical treatment from Dr. John Powers, a podiatrist, for complaints of right ankle and heel pain. He recounted that appellant sustained an ankle injury on March 22, 2017 when he slid down a rope during training and sustained second-degree burns. Dr. Powers noted that appellant's burns had completely healed, but he still experienced pain with walking and standing. He reviewed appellant's history and conducted an examination. Dr. Powers noted tenderness upon palpation of the right Achilles insertion and proximal to the insertion of the Achilles. Vascular examination showed dorsalis pedis and posterior tibial pulses palpable 2 over 4 bilaterally and no edema. Dr. Powers diagnosed history of cellulitis and Achilles tendinitis of the right lower extremity. He recommended a right ankle magnetic resonance imaging (MRI) scan.

An April 20, 2017 right ankle MRI scan revealed subacute posterior calcaneus fracture and findings which may represent mild tenosynovitis of the posterior tendons of the ankle.

In an April 24, 2017 report, Dr. Powers related that he evaluated appellant for follow-up of right heel injury. He reviewed appellant's history and noted that a right ankle MRI scan showed an incomplete nondisplaced fracture of the posterior body of the calcaneus. Dr. Powers reported physical examination findings of 5/5 muscle strength of both lower extremities and normal range of motion of the ankle subtalar midtarsal. He diagnosed calcaneal fracture, nondisplaced fracture of body of right calcaneus, and history of cellulitis. Dr. Powers recommended that appellant maintain a strict nonweightbearing status to the right lower extremity. He completed a duty status report (Form CA-17), which noted that appellant could not resume work.

Dr. Powers continued to treat appellant. In reports dated May 16 and June 6, 2017, he recounted that appellant had less pain since he started using crutches and a cast boot. Dr. Powers reviewed appellant's history and noted that radiographs of the right foot showed evidence of calcaneal fracture healing. He noted tenderness upon palpation of the right Achilles insertion and proximal to the insertion of the Achilles. Dr. Powers diagnosed calcaneal fracture and nondisplaced fracture of the body of the right calcaneus. He completed CA-17 forms, which noted that appellant could not resume work.

A June 6, 2017 right foot x-ray showed a healed fracture of the right fifth toe proximal phalanx and mild soft tissue swelling of the right foot.

On June 9 and 23, 2017 appellant filed claims for wage-loss compensation (Form CA-7) for total disability for the period May 24 to June 23, 2017.

By development letter dated June 20, 2017, OWCP informed appellant that his claim was initially accepted as a minor injury, but it was now considering the merits of the claim because he had submitted a claim for wage-loss compensation. It advised him of the factual and medical evidence necessary to establish his claim and also provided a questionnaire for completion. OWCP afforded appellant 30 days to provide the necessary factual information and medical evidence.

On June 25, 2017 OWCP received appellant's response to the June 20, 2017 development letter. In a narrative statement, he recounted that at the time of injury he was crawling across a rope on the confidence course that was approximately six feet off the ground. Appellant explained that the back of his legs began to burn and he fell. He noted that his legs landed heel first in the

dirt from about six feet or higher. Appellant related that he initially went to the medical shed for treatment and was told that his burns were infected. He reported that he was off work for one week. Appellant indicated that while the infection began to clear up, he still had pain in his heel. He was prescribed additional pain medication and advised to take more time off work.

Appellant also submitted a June 27, 2017 report by Dr. Powers. He reported examination findings for no tenderness on lateral compression of the calcaneus and intact neurological vascular status of the right lower extremity. Dr. Powers diagnosed calcaneal fracture and nondisplaced fracture of the body of the right calcaneus, initial encounter. He completed a CA-17 form, which indicated that appellant could work light duty.

By decision dated July 25, 2017, OWCP denied appellant's traumatic injury claim finding insufficient medical evidence to establish causal relationship between the accepted March 22, 2017 employment incident and any diagnosed right lower extremity conditions.

On August 8, 2017 appellant requested reconsideration.

OWCP received a July 11, 2017 report by Dr. Powers who noted that appellant no longer complained of pain in his foot and was ambulating well in regular shoes. Dr. Powers provided examination findings and opined that appellant was cleared for full activities and return to work.

Appellant also submitted an undated letter from Dr. Powers, which indicated that on March 22, 2017 appellant sustained an injury while sliding down a rope while training. He noted that appellant had a second-degree rope burn to the right ankle and developed an infection. Dr. Powers explained that appellant had completely healed from the second-degree burn, but still had continued pain in his posterior right ankle and heel. He reported that a right ankle MRI scan revealed that appellant had a calcaneal stress fracture and he explained that appellant was placed in nonweight bearing status and placed in a cast boot. Dr. Powers related that during this time appellant could not perform his training exercises. He indicated that on July 11, 2017 appellant was cleared for full duty as his calcaneal stress fracture had resolved.

By decision dated October 17, 2017, OWCP modified the July 25, 2017 decision. It found that the medical evidence of record was sufficient to "accept" the diagnoses of bilateral lower leg second-degree friction burns and right foot/ankle cellulitis as causally related to the accepted March 22, 2017 employment incident. However, OWCP denied expansion of the acceptance of the claim, finding that the medical evidence of record was insufficient to establish that appellant's diagnosed right heel calcaneal stress fracture and right ankle tendinitis were causally related to the accepted March 22, 2017 employment injury.[4]

By separate decision of even date, OWCP formally accepted appellant's claim for second-degree burn of the lower leg - bilaterally (resolved), and cellulitis of the right ankle/foot (resolved).

On September 26, 2018 appellant, through counsel, requested reconsideration.

[4] OWCP also denied appellant's claim(s) for wage-loss compensation for the period April 5 to June 23, 2017 finding that the medical evidence of record was insufficient to establish that he was totally disabled from work as a result of his accepted March 22, 2017 employment injury.

Appellant resubmitted reports by Dr. Powers dated April 14, 24, and May 16, 2017.

By decision dated February 4, 2019, OWCP denied modification of the October 17, 2017 decision. It found that the medical evidence of record was insufficient to establish that the acceptance of the claim should be expanded to include right ankle tendinitis and right heel calcaneal stress fracture as causally related to the accepted March 22, 2017 employment injury.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[5]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[6] 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.[7] 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).[8] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is insufficient to establish causal relationship.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional right ankle and foot conditions as causally related to the accepted March 22, 2017 employment injury.

Appellant submitted an undated letter and a series of reports dated April 14 to June 27, 2017 from Dr. Powers. Although Dr. Powers' reports contain an accurate description of the accepted employment injury and diagnosis of calcaneal fracture, the above-referenced reports do not contain any opinion on whether appellant's right calcaneal fracture was causally related to the accepted March 22, 2017 employment injury. 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.[10] These reports, therefore, are insufficient to establish appellant's claim.

[5] *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

[6] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

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

[8] *Id.*

[9] *E.B.*, Docket No. 17-1497 (issued March 19, 2019); *V.W.*, 58 ECAB 428 (2007).

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

Appellant also submitted medical reports dated April 3 and 5, 2017 from Brenda Perez, a registered nurse, and an April 12, 2017 report by Becki Shumaker, a nurse practitioner. These reports are of no probative value, however, because registered nurses and nurse practitioners are not considered physicians as defined under FECA.[11]

Diagnostic testing results of record, including the April 12 and June 6, 2017 right foot x-ray examination reports and an April 20, 2017 right ankle MRI scan report, are likewise insufficient to establish any additional conditions as reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and the diagnosed conditions.[12] Thus, these reports are also insufficient to meet appellant's burden of proof regarding expansion of his claim.[13]

As the medical evidence of record does not contain a rationalized medical opinion regarding causal relationship between appellant's additional diagnosed conditions and the accepted employment injury, the Board finds that he has not met his burden of proof.

On appeal counsel argues that the decision is contrary to law and fact. He did not, however, provide any evidence in support of his argument.

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 expand the acceptance of his claim to include additional right ankle and foot conditions as causally related to the accepted March 22, 2017 employment injury.

[11] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also 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); 20 C.F.R. § 10.5(t). *M.G.*, Docket No. 19-0918 (issued September 20, 2019) (nurse practitioner).

[12] *See A.B.*, Docket No. 17-0301 (issued May 19, 2017).

[13] *See P.M.*, Docket No. 18-0287 (issued October 11, 2018).

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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