



## **ISSUE**

The issue is whether appellant has met his burden of proof to establish a left foot injury in the performance of duty on May 16, 2017, as alleged.

## **FACTUAL HISTORY**

On May 16, 2017 appellant, then a 44-year-old woodcrafter, filed a traumatic injury claim (Form CA-1) alleging that on that day he injured his left foot when walking up a hill while in the performance of duty. He claimed that the left side of his left foot “popped.” Appellant stopped work that same day and he received continuation of pay from May 17 through June 30, 2017.<sup>4</sup> The employing establishment noted its understanding that he was injured in the performance of duty, as alleged.

An urgent care report with an illegible provider’s signature dated May 17, 2017 noted that appellant presented with the chief complaint of left foot pain which began on May 16, 2017 while walking up a hill, feeling a pop in his left foot associated with sharp pain. Appellant reported that he had a left foot fusion surgery in March 2016. An x-ray of the left foot was found to reveal a fracture of the fourth metatarsal. Appellant’s ankle was strapped and he was placed in a surgical boot. The diagnosed condition was displaced closed fracture of fourth metatarsal bone of the left foot. The health care provider returned appellant to sedentary work on May 24, 2017.

On May 22, 2017 appellant was treated by Dr. Seth G. Eberhardt, a podiatrist, for a fracture of the left fourth metatarsal. He reported that a week prior he was walking up a sharp incline and felt a snap. Dr. Eberhardt noted appellant’s history of a triple arthrodesis of the left foot in March 2016. He reported swelling of the left foot along the fourth metatarsal, minimal range of motion of the ankle joint, and no motion of the subtalar joint and talonavicular joint secondary to fusion. X-rays revealed a fracture of the fourth metatarsal with a healing callus, which appeared to be an older fracture, possibly a stress fracture that broke all the way. Dr. Eberhardt diagnosed left fourth metatarsal fracture and advised that appellant was disabled from work for two weeks. He opined that the stress fracture was probably a result of appellant’s limited range of motion of his ankle joint. In a return to work slip dated May 22, 2017, Dr. Eberhardt noted that appellant was off work for two weeks.

In an attending physician’s report (Form CA-20) dated May 23, 2017, Dr. Eberhardt noted that on May 16, 2017, while walking on an incline, appellant felt a snap. He diagnosed fourth metatarsal fracture and checked a box marked “yes” that appellant’s condition was caused or aggravated by an employment activity noting the injury happened while walking on an incline. Dr. Eberhardt advised that appellant was totally disabled from May 22 to June 6, 2017 and could resume regular duty on June 7, 2017.

In a report dated June 5, 2017, Dr. Eberhardt treated appellant for his left fourth metatarsal fracture and noted no gross angulation, no pain with range of motion of the left metatarsal joints, weight bearing without pain, equines contracture on the left side, and triple arthrodesis of the left foot. X-rays revealed a healing fourth metatarsal fracture in adequate alignment with some angulation. Dr. Eberhardt diagnosed left fourth metatarsal fracture that seemed to be healing

---

<sup>4</sup> Appellant submitted a claim for compensation (Form CA-7) for leave without pay for the period July 1 to 23, 2017.

without issue. In a return to work slip dated June 5, 2017, he noted that appellant was to remain off work for two additional weeks.

In a report dated June 15, 2017, Dr. Bruce Edwards, a Board-certified orthopedic surgeon, reported that appellant had a sudden onset of injury on May 16, 2017 while at work. He indicated that appellant sustained no traumatic event to cause the fourth metatarsal fracture while walking on a hill. Appellant reported having a stiff foot related to a previous triple arthrodesis foot fusion which was performed to manage pain related to a congenital condition. Dr. Edwards noted an antalgic gait, surgical scar on the lateral and medial ankle foot with multiple puncture wounds, tenderness of the left metatarsal shaft, normal reflexes and sensation, and restricted range of motion on the left side. He also noted localized swelling and discomfort to palpation of the fourth metatarsal shaft with no deformity, well-healed old incision scars, stiff subtalar joint, and limited ankle motion. X-rays of the left foot revealed exuberant callus stabilizing fourth metatarsal mid shaft fracture with minimal angulation and status post triple arthrodesis with multiple screw fixation. Dr. Edwards diagnosed left closed displaced fracture of the fourth metatarsal of the left foot. He noted that the fracture was healing, but not solidly united.

Dr. Edwards reexamined appellant on July 20, 2017 for continued left foot pain. In his report, he noted findings of a gait with a slight limp and palpable bone at the fourth metatarsal shaft without tenderness. Dr. Edwards noted that x-rays of the left foot revealed the previous arthrodesis with retained hardware in hind foot, a healed fourth metatarsal fracture with exuberant bone formation, and satisfactory alignment. He diagnosed displaced fracture of the fourth metatarsal, left foot with routine healing and noted the fracture was now united and healed. Dr. Edwards advised that the risk of stress fracture was high due to previous arthrodesis and appellant's size.

In a development letter dated August 21, 2017, OWCP advised appellant of the deficiencies in his claim and requested that he provide answers to an enclosed questionnaire and submit additional information including a comprehensive medical report from his treating physician, which included a reasoned explanation as to how the specific employment incident had caused or contributed to his claimed injury. It afforded appellant 30 days to respond.

Appellant did not respond to the questionnaire, but submitted Dr. Edward's June 15, 2017 report which was already of record.

By decision dated September 21, 2017, OWCP denied appellant's claim, finding that the evidence submitted failed to establish that the employment incident had occurred as alleged. It noted that he had not responded to the development letter. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

### **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,<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 an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.<sup>8</sup> Fact of injury consists of two components that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident that is alleged to have occurred.<sup>9</sup> Second, the employee must submit sufficient medical evidence to establish that the employment incident caused a personal injury.<sup>10</sup>

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>11</sup> Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has met his burden of proof to establish a left foot injury in the performance of duty on May 16, 2017, as alleged.

On his claim form appellant alleged that he injured his left foot on May 16, 2017 when the left side of his left foot popped walking up a hill while in the performance of duty. The employing establish confirmed that he had been injured in the performance of duty, as alleged. The medical

---

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

<sup>7</sup> *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).

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

<sup>9</sup> *C.B.*, Docket No. 18-0071 (issued May 13, 2019); *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

<sup>11</sup> *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

<sup>12</sup> *D.R.*, Docket No. 19-0072 (issued June 24, 2019)

records submitted in support of his claim each document a consistent history of an injury sustained while walking on an inclined surface followed by a sudden pain in his left foot. The medical records also acknowledge that appellant had a prior left foot condition which had been surgically corrected in March 2016, but that he sustained a new injury. There is no evidence of record which contradicts the alleged mechanism of injury.

The Board finds that appellant has consistently described the employment incident as occurring on May 16, 2017 while walking on an incline or hill while in the performance of duty. As noted, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.<sup>13</sup> The Board finds that, under the circumstances of this case, appellant's allegations of sustaining a left foot injury when walking on an incline or hill while in the performance of duty, as acknowledged by the employing establishment, have not been refuted by strong or persuasive evidence and there are no inconsistencies sufficient to cast serious doubt on his version of the employment incident.<sup>14</sup>

As appellant has established that the May 16, 2017 employment incident occurred as alleged, further consideration of the medical evidence is necessary.<sup>15</sup> For these reasons, the case will be remanded to OWCP to evaluate the medical evidence of record and determine whether he has met his burden of proof to establish a medical condition causally related to the accepted May 16, 2017 employment incident.<sup>16</sup> Following such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that appellant has met his burden of proof to establish that the employment incident occurred in the performance of duty on May 17, 2017, as alleged. The Board further finds that the case is not in posture for decision with regard to causal relationship between his diagnosed left foot conditions and the accepted May 17, 2017 employment incident.

---

<sup>13</sup> *Supra* note 10; *see also M.T.*, Docket No. 17-1934 (issued September 19, 2018).

<sup>14</sup> *S.S.*, Docket No. 18-1456 (issued July 3, 2019); *C.V.*, Docket No. 15-0615 (issued September 13, 2016).

<sup>15</sup> *D.C.*, Docket No. 19-0716 (issued September 13, 2019); *M.D.*, Docket No. 18-1365 (issued March 12, 2019).

<sup>16</sup> *D.C.*, *id.*; *A.R.*, Docket No. 18-0924 (issued August 13, 2019); *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 21, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 14, 2020  
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