United States Department of Labor
Employees' Compensation Appeals Board

A.D., Appellant	)	
and	)	**Docket No. 20-0679**
	)	**Issued: November 10, 2020**
U.S. POSTAL SERVICE, SAN FRANCISCO PROCESSING & DISTRIBUTION CENTER FINANCE POST OFFICE, San Francisco, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 4, 2020 appellant filed a timely appeal from a January 9, 2020 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the January 9, 2020 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 establish a diagnosed medical condition causally related to the accepted November 7, 2019 employment incident.

FACTUAL HISTORY

On December 5, 2019 appellant, then a 63-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on November 7, 2019 he twisted his left ankle when he was exiting his truck while in the performance of duty. He explained that his left foot slipped off the truck step and hit the pavement, causing pain and swelling in his left ankle. Appellant stopped work that day.

In a November 7, 2019 industrial work status report, Dr. Sarah J. Janssen, Board-certified in occupational medicine, placed appellant on modified activity at home and work from November 8 through 22, 2019.

A November 8, 2019 after-visit summary noted that appellant had been seen that day by Dr. Hallam M. Gugelmann, an emergency medicine specialist, who diagnosed acute left ankle pain and a work-related injury. In a doctor's first report of occupational injury or illness of even date, Dr. Gugelmann noted that appellant was injured on November 7, 2019 and again diagnosed left ankle pain. He indicated that appellant was unable to perform his usual work. In a work excuse note of even date, Dr. Gugelmann excused appellant from work indefinitely. In a prescription slip of even date, he prescribed pain medication.

A November 26, 2019 after-visit summary noted that appellant had been seen that day by a physical therapist.

In a December 26, 2019 development letter, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit appropriate medical evidence. No further evidence was submitted.

By decision dated January 9, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish the medical component of fact of injury as no medical condition was diagnosed. It 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[3] has the burden of proof to establish the essential elements of his or her claim, including 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

[3] *Supra* note 2.

limitation of FECA,[4] 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.[5] 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.[6]

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. There are two components involved in establishing 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. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[7]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] 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 specific employment factors identified by the employee.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted November 7, 2019 employment incident.

On November 8, 2019 Dr. Gugelmann noted that appellant was injured on November 7, 2019 and diagnosed left ankle pain. The Board has consistently held that pain is a description of a symptom and not, in itself, considered a firm medical diagnosis.[10] The Board has also held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal

[4] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] *See C.H.*, Docket No. 20-0228 (issued October 7, 2020); *T.G.*, Docket No. 19-0904 (issued November 25, 2019). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

relationship is of no probative value.[11] As Dr. Gugelmann failed to provide a specific diagnosis, his assessment of left ankle pain was insufficient to establish appellant's claim.

On November 7, 2019 Dr. Janssen placed appellant on modified activity from November 8 through 22, 2019, but provided no diagnosis. Similarly, Dr. Gugelmann, in his November 8, 2019 work excuse note and prescription slip, excused appellant from work indefinitely and prescribed Motrin without a medical diagnosis. Lacking a firm diagnosis and rationalized medical opinion regarding causal relationship, this medical evidence is of no probative value.[12]

Currently, there is no evidence of record that establishes a medical diagnosis in connection with the accepted November 7, 2019 employment incident. Consequently, appellant failed to establish that he sustained an injury causally related to the accepted employment incident.[13]

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 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 diagnosed medical condition causally related to the accepted November 7, 2019 employment incident.

[11] *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

[12] *M.V.*, Docket No. 19-1515 (issued January 2, 2020): *M.M.*, Docket No. 16-1617 (issued January 24, 2017); *Robert Broome*, 55 ECAB 339 (2004).

[13] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *J.L.*, Docket No. 18-1804 (issued April 12, 2019). *John J. Carlone*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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