United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	**Docket No. 20-1560**
	)	**Issued: April 13, 2021**
U.S. POSTAL SERVICE, MILWAUKEE PROCESSING & DISTRIBUTION CENTER, Milwaukee, WI, 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:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 27, 2020 appellant, through counsel, filed a timely appeal from an April 7, 2020 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.

[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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted January 22, 2020 employment incident.

FACTUAL HISTORY

On February 6, 2020 appellant, then a 40-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 22, 2020 he sustained a right foot fracture when he fell from a porch and landed on his feet while in the performance of duty. On the reverse side of the claim form L.J., an employing establishment supervisor, indicated that her knowledge of the facts about the injury was consistent with appellant's statements and checked the box marked "Yes" indicating that appellant was injured in the performance of duty. However, she noted that the employing establishment was controverting the claim because he did not report the incident to management for more than two weeks and no medical evidence had been received with the claim. Appellant stopped work on the date of injury.

In a letter of controversion dated February 18, 2020, L.J. requested that continuation of pay be withheld in light of the employing establishment's challenges to the claim. In a second letter of controversion dated February 26, 2020, L.J. alleged that appellant did not deliver mail on the date of injury to the location that he listed on Form CA-1.

In a March 3, 2020 development letter, OWCP informed appellant that it had received no evidence in support of his traumatic injury claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. In the same letter, it also informed the employing establishment that if appellant was treated at an employing establishment medical facility for the alleged injury, it must provide treatment notes.

In an April 2, 2020 response to the questionnaire, appellant indicated that he did report the incident to a supervisor on January 22, 2020. He further replied that the next day, January 23, 2020, he could not bear weight on the injured foot, so he called the employing establishment's hotline and then sought treatment at an urgent care facility where he was diagnosed with a fracture and referred to an orthopedic physician.

In a January 23, 2020 treatment note, Heather Korus, an advanced practice nurse prescriber (APNP), indicated that appellant related a history of pain and swelling in the lateral aspect of the right ankle, which had been worsening for the past two weeks. Appellant denied an acute injury, but indicated that he worked as a mail carrier and thought he tweaked it at work. Nurse Korus performed a physical examination and noted slight swelling of the entire right ankle, ecchymosis extending from the anterior ankle to the medial aspect of the dorsum of the right foot, and subjective pain with range of motion. She ordered x-rays of the right foot and ankle, provided appellant with a shoe and crutches, referred him to orthopedics, and provided appellant with a note taking him out of work until January 28, 2020. Nurse Korus diagnosed acute right ankle pain and closed non-displaced fracture of the navicular bone of right foot, noting that, because appellant had point tenderness and swelling in that area, the injury would be treated as an acute fracture.

X-rays dated January 23, 2020 indicated potential residuals of a remote trauma to the posterior aspect of the tarsal navicular bone.

In a report dated January 24, 2020, Dr. Benjamin Abeyta, a sports medicine specialist, noted that appellant provided a history of right foot pain which started two weeks prior, but that on January 22, 2020 he fell from a porch while working, landing on his feet. He reviewed the January 23, 2020 x-rays and performed a physical examination which revealed tenderness to palpation of the medial malleolus, posterior tibialis and navicular bone. Dr. Abeyta diagnosed "right ankle pain acute --> posterior tibial tendon dysfunction + / - acute navicular injury," which he opined was related to the specified work injury. He referred appellant for a magnetic resonance imaging scan, prescribed a boot, and recommended seated office duty until the imaging was completed. In an ambulatory encounter orthopedic note of even date, Dr. Abeyta lists diagnoses of possible right tarsal navicular fracture of unspecified chronicity, acute right ankle pain, right foot pain, posterior tendon dysfunction, and pain associated with accessory navicular bone of right foot.

By decision dated April 7, 2020, OWCP accepted that the January 22, 2020 employment incident occurred as alleged. However, it denied the claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted employment incident. Consequently, OWCP found that appellant had not met the requirements 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 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

[3] *Supra* note 1.

[4] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 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).

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 medical condition causally related to the accepted January 22, 2020 employment incident.

In support of his claim, appellant submitted a January 23, 2020 report from Nurse Korus. This Board has long held that certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.[10] Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[11] Consequently, Nurse Korus' report is insufficient to meet appellant's burden of proof.

The January 24, 2020 reports of Dr. Abeyta documented diagnoses including "right ankle pain acute --> posterior tibial tendon dysfunction + / - acute navicular injury," "possible" right tarsal navicular fracture of unspecified chronicity, acute right ankle pain, right foot pain, posterior tendon dysfunction, and pain associated with accessory navicular bone of right foot. The Board has held that pain is a description of a symptom rather than a clear diagnosis of a medical condition.[12] Moreover, Dr. Abeyta diagnosed a "possible" navicular fracture of "unspecified chronicity" and described only "dysfunction" of a posterior tendon. A medical report lacking a

[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] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *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). *K.A.*, Docket No. 18-0999 (issued October 4, 2019).

[11] *K.A.*, *id*.; *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id.*

[12] *D.R.*, Docket No. 18-1408 (issued March 1, 2019); *D.A.*, Docket No. 18-0783 (issued November 8, 2018).

firm diagnosis is of no probative value.[13] As such, Dr. Abeyta's reports are insufficient to meet appellant's burden of proof.

The remaining medical evidence includes radiographic studies of appellant's foot. The Board has held, however, that diagnostic studies standing alone lack probative value and are insufficient to establish the claim.[14]

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted January 22, 2020 employment incident, the Board finds that he has not met his 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 medical condition causally related to the accepted January 22, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

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

[14] *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *J.P.*, *supra* note 4; *A.B.*, Docket No. 17-0301 (issued May 19, 2017).