

ISSUE

The issue is whether appellant has met his burden of proof to establish that the acceptance of his claim should be expanded to include additional conditions causally related to the accepted February 21, 2018 employment injury.

FACTUAL HISTORY

On February 28, 2018 appellant, then a 56-year-old work and family life consultant, filed a traumatic injury claim (Form CA-1) alleging that he twisted his left foot on February 21, 2018 when pushing a cart through a doorway while in the performance of duty, causing a sprain and possible fracture of his left foot. On the reverse side of the claim form, the employing establishment noted that appellant had stopped work and received medical care on February 22, 2018.

In support of his claim, appellant submitted a February 22, 2018 report wherein Dr. Bejjenki Chary, Board-certified in internal medicine, advised that he should be excused from work through the end of the month. In a uniform consultation referral form of the same date, he referred appellant to an orthopedist to evaluate a sprained or broken left foot.

In a March 1, 2018 development letter, OWCP informed appellant that additional evidence was required in support of his claim. It requested that he submit a comprehensive narrative medical report from a qualified physician that included a diagnosis and an opinion, supported by medical rationale, addressing how the claimed employment incident caused or aggravated a medical condition. OWCP attached a factual questionnaire for appellant's completion and afforded him 30 days to submit the necessary evidence.³

By decision dated April 3, 2018, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted February 21, 2018 employment incident.

OWCP subsequently received an x-ray of appellant's left foot, obtained on February 22, 2018, which revealed swelling of the soft tissue in the lateral forefoot, a plantar heel spur, a two millimeter linear ossific fragment resulting from trauma at the fifth metatarsal, and no fractures.

On February 22, 2018 Dr. Peter E. Lavine, an orthopedic surgeon, obtained a history of appellant tripping on February 21, 2018 at work, injuring his left foot. On examination he found tenderness in the second, third, and fourth metatarsal, swelling of the left foot, and hypersensitivity of the peroneal nerve. Dr. Lavine indicated that the x-ray of appellant's left foot did not display any fractures. He diagnosed left foot pain, a contusion of the dorsum of the left foot, and possible reflex sympathetic dystrophy (RSD).

In a progress report dated March 1, 2018, Dr. Lavine found that appellant's left foot was tender and swollen with restricted movement. He diagnosed left foot pain and advised that he was

³ OWCP subsequently received a March 8, 2018 employing establishment work status report (Form CA-3) which indicated that appellant had returned to work without restrictions on March 5, 2018.

unable to work. On April 3, 2018 Dr. Lavine noted that appellant's foot pain had resolved, reoccurred, and again resolved. He found minimal dorsal swelling with no tenderness and diagnosed left foot pain.

On October 18, 2018 appellant requested reconsideration.

In a November 14, 2018 development letter, OWCP requested additional information from appellant, including a response to its question of whether he had a similar disability or symptoms prior to his injury and all records of any prior treatment. It also requested a comprehensive narrative medical report from a qualified physician that included a diagnosis and an opinion, supported by medical rationale, addressing how the claimed employment incident caused or aggravated a medical condition. OWCP advised that pain was not a valid diagnosis. It afforded appellant 20 days to submit the requested evidence.

In a December 4, 2018 letter, appellant responded that he did not have a similar disability or symptoms prior to his workplace injury, recounted the trajectory of his treatment, and noted that OWCP should have everything it needs to accept his claim in its possession.

By decision dated December 19, 2018, OWCP modified its April 3, 2018 decision. It determined that the medical evidence from his attending physician was sufficient to establish his claim for a left foot contusion. OWCP, however, denied appellant's claim for additional left foot conditions, however, finding that the evidence of record was insufficient to establish causal relationship between the additional diagnosed conditions and the accepted February 21, 2018 employment injury.⁴

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,⁶ 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.⁷ 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.⁸ To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. A fact of injury

⁴ By separate decision dated December 19, 2018, OWCP formally accepted appellant's claim for left foot contusion.

⁵ *Supra* note 1.

⁶ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

⁸ *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).

determination is based on two elements. 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.⁹ Second, the employee must submit sufficient medical evidence to establish that the employment incident caused a personal injury.

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.¹⁰ Section 10.126 of Title 20 of the Code of Federal Regulations provides that a decision shall contain findings of fact and a statement of reasons.

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that the acceptance of claim should be expanded to include additional conditions as causally related to the accepted February 21, 2018 employment injury.

Appellant submitted a February 22, 2018 report wherein Dr. Lavine noted the history of appellant tripping on February 21, 2018 at work, injuring his left foot. On examination Dr. Lavine found tenderness in the second, third, and fourth metatarsal, swelling of the left foot, and hypersensitivity of the peroneal nerve. He indicated that the x-ray of appellant's left foot did not display any fractures. Dr. Lavine diagnosed left foot pain, a contusion of the dorsum of the left foot, and possible RSD. In a progress report dated March 1, 2018, he found that appellant's left foot was tender and swollen with restricted movement. Dr. Lavine diagnosed left foot pain and advised that he was unable to work. On April 3, 2018 he noted that appellant's foot pain had resolved, reoccurred, and again resolved. Dr. Lavine found minimal dorsal swelling with no tenderness and diagnosed left foot pain. None of these reports, however, provided an opinion on causal relationship between appellant's additional left foot conditions and the accepted 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.¹¹ These reports, therefore, are insufficient to establish expansion of appellant's claim.

In a February 22, 2018 report, Dr. Chary advised that appellant should be excused from work through the end of the month. In a uniform consultation referral form of even date, he referred appellant to an orthopedist to evaluate a sprained or broken left foot. As Dr. Chary did not provide an opinion on causal relationship, this report is also insufficient to establish expansion of the claim.¹²

Appellant also submitted an x-ray of his left foot, obtained on February 22, 2018, which revealed swelling of the soft tissue in the lateral forefoot, a plantar heel spur, a two millimeter linear ossific fragment resulting from trauma at the fifth metatarsal, and no fractures. The Board,

⁹ *D.B.*, Docket No. 18-1359 (issued May 14, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ 5 U.S.C. § 8124(a).

¹¹ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *Id.*

however, has held that diagnostic tests, standing alone, lack probative value as they do not provide a physician's opinion on whether there is a causal relationship between appellant's accepted employment incident/exposure and a diagnosed condition.¹³

As the medical evidence of record is insufficient to establish causal relationship between additional diagnosed left foot conditions and the accepted employment injury, the Board finds that appellant 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 that the acceptance of claim should be expanded to include additional conditions as causally related to the accepted February 21, 2018 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹³ See *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *A.P.*, Docket No. 18-1690 (issued December 12, 2019); *R.M.*, Docket No. 18-0976 (issued January 3, 2019).