

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
T.D., Appellant)	
)	
and)	Docket No. 19-1779
)	Issued: March 9, 2021
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. COAST GUARD, Washington, DC,)	
Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On August 23, 2019 appellant, through counsel, filed a timely appeal from an August 2, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 right ankle condition causally related to the accepted November 4, 2015 employment incident.

FACTUAL HISTORY

On March 28, 2017 appellant, then a 70-year-old contract specialist, filed a traumatic injury claim (Form CA-1) alleging that on November 4, 2015 he injured his right ankle when he was struck by the bar on a security gate while in the performance of duty.³ He did not stop work.

In a November 10, 2015 medical report, Dr. Joanna Shuman, a Board-certified podiatrist, noted that appellant presented as a new patient with pain in the plantar left forefoot and reported pain in the right lateral heel for several weeks. She diagnosed a punctate hyperkeratotic lesion on the left foot.

In a development letter dated April 25, 2017, OWCP informed appellant of the deficiencies in his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a factual questionnaire for completion. OWCP afforded appellant 30 days to respond. It sent a similar letter of even date to the employing establishment, requesting that it answer a series of questions including whether the alleged injury occurred on employing establishment premises.

OWCP subsequently received a January 6, 2016 medical report, Dr. Shuman noted that appellant returned with a complaint of pain in the right heel after being struck by a security gate at his work on the same morning. She noted that appellant reported that he had been previously struck in a similar work incident on November 4, 2015. Appellant further reported to her that, while his pain was decreased at his prior visit, he had experienced intense pain in his right heel over the holidays that incapacitated him for two days.

By decision dated May 26, 2017, OWCP denied appellant's claim, finding that he had not established the factual component of his claim as he had not responded to its April 25, 2017 development letter. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 22, 2018 appellant, through counsel, requested reconsideration.

In an attached response to OWCP's development questionnaire, dated November 29, 2017, appellant asserted that there were a number of errors committed by the employing establishment in filing his claim. He noted that he was originally advised not to file a claim when he was first injured on November 4, 2015 and that when his claim was eventually submitted, the date of injury was incorrectly listed as January 6, 2016. Appellant further indicated that he subsequently filed

³ Appellant has a prior occupational disease claim, filed on January 24, 2017, alleging that he sustained an "impact injury resulting in Achilles Tendinitis of the right ankle." OWCP assigned that claim File No. xxxxxx513. Appellant's claims have not been administratively combined.

an occupational disease claim (Form CA-2) at the suggestion of a human resource specialist and he now believes that both claims should be consolidated.

Appellant provided details of his injuries. He noted that he experienced immediate pain to his right ankle following the claimed injury and his pain increased to the point that he had periods where he was barely able to walk or walked with a limp, particularly when traversing stairs. Appellant indicated that driving to and from the office exacerbated his pain, but during days he was out of the office or teleworked, he was off his feet and his pain subsided. He asserted that he had no preexisting injury to his right ankle and that he had not sustained any other injury following the date of injury to the date he first reported it.

By decision dated June 8, 2018, OWCP accepted that the November 4, 2015 incident occurred, as alleged. However, it denied appellant's claim, finding that there was no medical evidence containing a medical diagnosis in connection with the November 4, 2015 employment incident.

On May 6, 2019 appellant, through counsel, requested reconsideration.

In support thereof, appellant submitted an October 3, 2018 narrative report, wherein Dr. Shuman noted that appellant's first appointment with her was November 10, 2015, a few days after being struck on the right heel by a security gate at work. She indicated that, during this appointment, appellant had complained of pain in his right foot, but she could not elicit pain in the right heel at the time. Dr. Shuman opined that, although she treated his left foot for a punctate hyperkeratotic lesion, the pain in the left foot was unrelated to the cause of pain in the right foot. She acknowledged that her November 10, 2015 report incorrectly noted that appellant had experienced pain in his right foot for weeks when he had only experienced the pain for days following the November 4, 2015 incident.

Dr. Shuman explained that decreasing motion and resting of the foot and ankle could have decreased inflammation and pain in a traumatized bone and; therefore, it could not be inferred that resting of the foot healed appellant's injury. She noted that his description of the increased level of pain between November 10, 2015 and January 6, 2016 appointments were consistent with a blunt force trauma injury to the Achilles tendon and the resulting tendinitis. Dr. Shuman indicated that appellant's pain increased after driving to and from work, but decreased after resting for the weekend. She further indicated that an ultrasound of the right foot performed in September 2016 showed calcification of the right Achilles tendon. Dr. Shuman opined that, in her medical opinion, appellant sustained a significant injury to the Achilles tendon in his right foot in early November 2015 and that it caused Achilles tendinitis.

By decision dated August 2, 2019, OWCP modified its prior decision, finding that appellant had established that the November 4, 2015 employment incident occurred as alleged. However, appellant's claim remained denied because the medical evidence of record was insufficient to establish that his diagnosed Achilles tendinitis was causally related to the accepted November 4, 2015 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

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.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right ankle condition causally related to the accepted November 4, 2015 employment incident.

⁴ *Supra* note 2.

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *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).

In a November 10, 2015 medical report, Dr. Shuman diagnosed a punctate hyperkeratotic lesion on the left foot, but offered no history of injury, diagnosis, or opinion regarding causal relationship between appellant's right foot injury and the accepted November 4, 2015 employment incident. The Board has held that medical evidence, which does not offer an opinion on causal relationship, is of no probative value to the issue of causal relationship.¹¹ Although Dr. Shuman noted that appellant had pain in his right heel, her report is still insufficient to satisfy his burden of proof because pain is a symptom, not a specific medical diagnosis.¹²

In a January 6, 2016 medical report, Dr. Shuman related that appellant was struck in his right heel again by a security gate on the same day and in the same manner as it happened on November 4, 2015, but she did not provide a firm diagnosis or render an opinion on causal relationship in connection with the November 4, 2015 incident. As previously noted, the Board has held that medical reports, which does not provide a firm diagnosis and render an opinion on causal relationship, are of no probative value and are insufficient to establish the claim. As Dr. Shuman's report fails to explain how the November 4, 2015 incident caused a diagnosed injury to appellant, this report is also insufficient to establish appellant's claim.

In support of his request for reconsideration, appellant submitted an October 3, 2018 report from Dr. Shuman. In this report, Dr. Shuman noted that when she initially saw appellant on November 10, 2015 she erred in reporting that he had pain for weeks prior when he had only complained of pain for a few days following the November 4, 2015 employment incident. She explained that his description of an increased level of pain between his November 10, 2015 and January 6, 2016 appointments was consistent with a blunt force trauma injury to the Achilles tendon and the resulting tendinitis. Dr. Shuman concluded that, in her medical opinion, appellant did sustain a significant injury to the Achilles tendon in his right foot in early November 2015 and that it caused Achilles tendinitis. While Dr. Shuman provided an affirmative opinion on causal relationship, her opinion is insufficiently rationalized. Dr. Shuman failed to provide a pathophysiological explanation as to how the accepted employment incident either caused or contributed to appellant's Achilles tendinitis.¹³ Without explaining how the mechanism of the accepted employment incident caused or aggravated the diagnosed condition, this opinion lacks the specificity and detail needed to establish appellant's claim. Furthermore, Dr. Shuman has indicated that appellant had been struck by the security gate on November 4, 2015 and again on January 6, 2016, but failed to distinguish the effects of each injury when she diagnosed Achilles tendinitis. Thus, the Board finds that the October 3, 2018 report is insufficient to meet appellant's burden of proof.¹⁴

¹¹ *D.B.*, Docket No. 19-0514 (issued January 27, 2020); *L.T.*, Docket No. 18-1603 (issued February 21, 2019).

¹² *I.M.*, Docket No. 19-1038 (issued January 23, 2020); *Y.S.*, *supra* note 10.

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See L.C.*, *supra* note 5; *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹⁴ *See T.R.*, Docket No. 18-1272 (issued February 15, 2019).

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 10.607.¹⁵

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right ankle condition causally related to the accepted November 4, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 2, 2019 decision of the Office of Workers' Compensation Programs is affirmed.¹⁶

Issued: March 9, 2021
Washington, DC

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

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

¹⁵ Upon return of the case record, OWCP shall administratively combine the present claim file with OWCP File No. xxxxxx513.

¹⁶ Christopher J. Godfrey, Deputy Chief Judge, was no longer a member of the Board effective January 20, 2021.