

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

<p>J.T., Appellant</p> <p>and</p> <p>U.S. POSTAL SERVICE, POST OFFICE, Grand Rapids, MI, Employer</p>	<p>))))))))</p>	<p>Docket No. 21-0933 Issued: February 23, 2022</p>
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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
 PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On June 2, 2021 appellant filed a timely appeal from a January 28, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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.³

¹ Appellant's AB-1 form indicates that she is appealing from a May 12, 2021 decision of OWCP; however, there is no such decision found in the case record. The most recent final adverse decision of OWCP was a January 28, 2021 merit decision.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the January 28, 2021 decision, OWCP received additional evidence. 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 an injury in the performance of duty, as alleged.

FACTUAL HISTORY

On November 12, 2020 appellant, then a 56-year-old letter carrier, filed a notice of recurrence (Form CA-2a) alleging that on February 1, 2020 he experienced a worsening of left ankle pain and symptoms related to a July 14, 2017 employment injury.⁴ He attributed his condition to being on his feet and an increase of movement to perform his job duties after his work hours increased. Appellant did not stop work. On December 4, 2020 OWCP converted the recurrence claim to an occupational disease claim as he claimed left ankle conditions due to new factors of employment over the course of more than one workday or shift, and assigned it OWCP File No. xxxxxx789.

In a medical report dated June 18, 2020, Dr. Timothy Tetzlaff, a family medicine specialist, related a history of a July 2017 left ankle sprain, which initially improved, but then slowly worsened over the past three months. He related that appellant had difficulty ambulating, extremely uncomfortable dorsiflexion, and pain at the top of the left foot, and that his job duties involved walking for miles each day. On physical examination, Dr. Tetzlaff documented that appellant reported pain in the dorsum of the left foot and was wearing an ankle brace. He assessed a recent worsening of a work-related left foot injury.

A left ankle magnetic resonance imaging (MRI) scan report dated August 17, 2020 revealed mild-to-moderate first metatarsophalangeal (MTP) joint osteoarthritis with partial thickness/low grade turf toe and subtle edema in the first metatarsal head, mild second MTP joint osteoarthritis, likely chronic deficiency of the anterior talofibular ligament, evidence of a previous injury to the calcaneofibular ligament, and mild inframalleolar peroneus brevis tendinosis.

In a report dated October 30, 2020, Dr. Scott A. Nemecek, a Board-certified orthopedic surgeon and foot and ankle specialist, related appellant's history of spraining his left ankle when he stepped in a hole on July 14, 2017. He noted that since that injury, he experienced pain within the lateral aspect of the ankle, which had progressively worsened over the past year and was most prevalent while walking down stairs or on uneven surfaces. On physical examination, Dr. Nemecek documented pain in the left peroneal tendon. He reviewed appellant's MRI scan and obtained x-rays. Dr. Nemecek diagnosed left ankle sprain/instability and subtle cavus with lateral foot overload. He recommended physical therapy, followed by surgical intervention.

In a development letter dated December 4, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed,

⁴ OWCP previously accepted a July 14, 2017 traumatic injury claim under OWCP File No. xxxxxx338 for a sprain of ligament of the left ankle. As appellant's claims have not been administratively combined, the evidence pertaining to OWCP File No. xxxxxx338 is not part of the caserecord presently before the Board.

provided a questionnaire for his completion, and afforded him 30 days to submit the necessary evidence. No response was received.

By decision dated January 28, 2021, OWCP denied appellant's occupational disease claim, finding that he had not established the factual component of his claim, as he had not submitted additional evidence to substantiate his employment-related activities in response to its December 4, 2020 development letter. 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 FECA⁵ 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,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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty, as alleged.

On his claim form, appellant indicated that he experienced worsening left ankle pain and function following an increase in his work hours, resulting in an increase in prolonged standing and movement performing his duties. He did not, however, submit a detailed account of the alleged employment factors or any additional corroborating factual evidence describing how he

⁵ *Supra* note 2.

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

sustained an injury due to an increase of movement and being on his. Similarly, Dr. Tetzlaff's June 18, 2020 report and Dr. Nemec's October 30, 2020 report do not identify any employment factors alleged to have caused the worsening of appellant's diagnosed conditions. The Board has found that such a vague recitation of facts does not support a claimant's burden to establish an injury in the performance of duty, as alleged.¹⁰

OWCP, in its December 4, 2020 development letter, informed appellant of the type of factual and medical evidence needed to establish his claim. Appellant, however, did not respond to OWCP's December 4, 2020 development letter and did not provide a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of a medical condition.¹¹

As there is no evidence of record sufficient to establish an injury in the performance of duty, as alleged, 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 10.607.¹²

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty, as alleged.

¹⁰ *T.C.*, Docket No. 20-1513 (issued June 3, 2021); *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *M.B.*, Docket No. 11-1785 (issued February 15, 2012).

¹¹ *Supra* note 9.

¹² Upon return of the case record, OWCP should consider administratively combining OWCP File No. xxxxxx338 with the present claim.

ORDER

IT IS HEREBY ORDERED THAT the January 28, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 2022
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