

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

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**J.S., Appellant**

**and**

**DEPARTMENT OF THE NAVY, MILITARY  
SEA LIFT COMMAND, Norfolk, VA, Employer**  
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**Docket No. 21-0376  
Issued: September 16, 2022**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 21, 2021 appellant filed a timely appeal from a September 9, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted July 16, 2019 employment incident.

## FACTUAL HISTORY

On November 14, 2019 appellant, then a 58-year-old supply utility man, filed a traumatic injury claim (Form CA-1) alleging that on July 16, 2019 he was on a sea vessel when a chair with a sharp metal frame fell on his left leg causing a puncture wound while in the performance of duty. He did not immediately stop work.

In a letter dated November 15, 2019, the employing establishment controverted appellant's claim because it was not filed within 30 days of the date of injury. OWCP also received a job description for a supply utility man position.

In a development letter dated November 18, 2019, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

On December 5, 2019 Dr. Terry S. Schwartz, an osteopath and family medicine specialist, completed a medical summary form and noted that appellant presented with left lower leg cellulitis. Findings on examination revealed a healing avulsion laceration on the left calf and neuritis of both hands. Dr. Schwartz diagnosed avulsion laceration of the left ankle with cellulitis. He indicated that appellant was not fit for sea duty and could not work for one month.

By decision dated December 23, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as he described. It explained that he had not submitted factual evidence to support that the employment caused the claimed medical condition. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In a follow-up medical summary dated January 2, 2020, Dr. Schwartz noted that appellant's wound was healing well, but was not completely resolved. He noted persistent neuritis and advised that appellant was not fit for sea duty. In a January 16, 2020 medical summary form, Dr. Schwartz noted that appellant was not fit for sea duty and would be rechecked in two weeks. On April 28, 2020 he diagnosed ulceration wound on left ankle and referred appellant to wound care for further evaluation and treatment.

In an appeal request form dated January 13, 2020, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on April 27, 2020. Appellant testified that he was on deployment to the Mediterranean Sea at the time of the July 2019 injury and remained on the vessel until he was medically evacuated in October 2019. He further testified that he was treated immediately after his injury by a Navy corpsman, and continued receiving treatment from Navy corpsmen who rotated on/off the vessel until appellant was medically evacuated from the vessel.

On March 26, 2020 Dr. Anson Wurapa, a Board-certified internist, treated appellant and advised that he would not be able to return to work and would be seen in follow up on April 16, 2020. In an undated note, he indicated that appellant had a poorly healing ulcer on his left leg and would require weekly office visits along with wound care to achieve closure. Dr. Wurapa treated appellant in follow up on May 7, 2020 and advised that appellant remained disabled due to a poorly healing ulcer of the left lower leg and required daily wound care. In an undated note, he continued appellant's disability status due to an ulcer of the left lower leg. On May 21, 2020 Dr. Wurapa advised that appellant was non-weight bearing and disabled from work due to an open wound on the left lower ankle that required frequent dressing changes.

On April 22, 2020 appellant underwent a lower extremity venous duplex examination, which revealed no evidence of deep vein thrombosis.

By decision dated June 5, 2020, OWCP's hearing representative modified the December 23, 2019 decision to find that appellant had established that the employment incident occurred as alleged. However, the claim remained denied as the medical evidence of record did not contain a diagnosis in connection with the accepted July 16, 2019 employment incident.

On July 8, 2020 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a March 5, 2020 report, Dr. Wurapa noted that he had treated appellant for trauma to his left inner ankle occurring approximately four months prior while he was on a Navy vessel. Appellant reported many weeks of care for the ulcer without complete healing. He noted appellant's history was significant for obesity and lower extremity venous insufficiency. Dr. Wurapa debrided the wound and diagnosed traumatic ulcer to the left medial ankle that is nonhealing. He opined that appellant likely had underlying venous insufficiency, which may also be contributing to the slow wound resolution. In a follow-up report dated March 12, 2020, Dr. Wurapa reexamined appellant for a left medial ankle ulcer, obesity, and chronic venous insufficiency. He noted the wound was stable, clean, and granular. Dr. Wurapa removed the dry skin and diagnosed left medial ankle ulcer. He advised that appellant's wound began in a traumatic fashion and was nonhealing for many months. Dr. Wurapa recommended an arterial Doppler to further investigate the ulcer and opined that appellant may have an underlying peripheral vascular disease contributing to the slow healing. He further noted in a March 26, 2020 progress report that appellant was healing very slowly. Dr. Wurapa diagnosed left medial ankle ulcer. On April 30, 2020 he examined appellant and diagnosed left medial lower leg venous stasis ulcer. In progress notes dated May 7 and 14, 2020, Dr. Wurapa noted the left medial ankle ulcer decreased in size and had no significant depth. He debrided the wound and provided a compression wrap. Dr. Wurapa diagnosed left medial ankle venous stasis ulcer.

Dr. Alexandra Dretler, a Board-certified internist, evaluated appellant on April 16, 2020 for chronic nonhealing venous stasis ulcer with some component of peripheral arterial disease. She noted a wound on the left medial ankle with a primary etiology of venous leg ulcer and secondary etiology of lymphedema. Dr. Dretler excised the skin, subcutaneous tissue, and fibrosis with minimal bleeding. She diagnosed nonhealing skin ulcer, lymphedema, and peripheral arterial disease.

On May 27, 2020 Dr. Hieu Nguyen, Board-certified in infectious disease and internal medicine, treated appellant for a venous stasis ulcer on his left leg after a traumatic wound. She noted findings on examination of a mostly dermatitis medial ankle left leg wound. Dr. Nguyen diagnosed venous stasis ulcer and recommended compression stockings. She released appellant to work and discharged him from the clinic. In an undated note, Dr. Nguyen advised that the left lower leg wound resolved on May 27, 2020 and appellant could return to work without restrictions.

Appellant was treated by Dr. Mohammed Khan, a Board-certified vascular surgeon, on June 3, 2020, who diagnosed left leg ulcer.

Dr. Schwartz treated appellant on July 15, 2020 and released him to work.

By decision dated September 9, 2020, OWCP denied modification of its June 5, 2020 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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 of FECA,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

To determine whether a federal employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident at the time and place and in the manner alleged.<sup>7</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>8</sup>

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<sup>3</sup> *Supra* note 2.

<sup>4</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *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).

<sup>7</sup> *Id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *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).

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the specific employment incident identified by the claimant.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has met his burden of proof to establish an avulsion wound and ulcer of the left ankle causally related to the accepted July 16, 2019 employment incident.

OWCP found that the July 16, 2019 employment incident occurred in the performance of duty, as alleged. Medical records dated December 5, 2019 from Dr. Schwartz diagnosed avulsion laceration of the left ankle with cellulitis. On April 28, 2020 he diagnosed ulceration wound on left ankle. Similarly, Dr. Wurapa indicated that appellant had a poorly healing ulcer on his left leg and would require weekly office visits along with wound care to achieve closure. He treated appellant in follow up on May 7, 2020 and advised that appellant remained disabled due to a poorly healing ulcer of the left lower leg. Likewise, in reports dated May 27 and June 3, 2020, Drs. Nguyen and Khan treated appellant for a venous stasis ulcer on his left leg after a traumatic wound.

As the evidence of record establishes that appellant's employment incident resulted in a visible injury, the Board finds that he has met his burden of proof to establish an avulsion wound and ulcer of the left ankle causally related to the accepted July 16, 2019 employment incident.<sup>11</sup> The case will, therefore, be remanded for payment of medical expenses for appellant's diagnosed avulsion wound and ulcer of the left ankle, to be followed by a *de novo* decision regarding any attendant disability.

The Board further finds, however, that appellant has not established additional conditions as causally related to the accepted employment injury.

Dr. Dretler evaluated appellant on April 16, 2020 for chronic nonhealing venous stasis ulcer with some component of peripheral arterial disease. In addition to nonhealing skin ulcer, she also diagnosed lymphedema, and peripheral arterial disease. However, Dr. Dretler did not provide an opinion on causal relationship between the additional diagnosed conditions and the accepted employment injury. The Board has held that medical evidence that does not offer an opinion

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<sup>9</sup> *M.S.*, Docket No. 19-1096 (issued November 12, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>10</sup> *R.S.*, Docket No. 19-1484 (issued January 13, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>11</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013). See also *A.J.*, Docket No. 20-0484 (issued September 2, 2020); *S.K.*, Docket No. 18-1411 (issued July 22, 2020).

regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>12</sup> This report is, therefore, insufficient to meet appellant's 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 and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has met his burden of proof to establish an avulsion wound and ulcer causally related to the accepted July 16, 2019 employment incident. The Board further finds, however, that he has not met his burden of proof to establish additional conditions as causally related to the accepted employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 9, 2020 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part.

Issued: September 16, 2022  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>12</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).