

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

J.S., Appellant

and

**U.S. AIR FORCE, RESERVE OFFICERS'
TRAINING CORPS, Cleveland, OH, Employer**

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**Docket No. 22-1388
Issued: April 4, 2023**

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

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 29, 2022 appellant filed a timely appeal from a June 22, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's compensation benefits for the accepted condition of Achilles tendinitis of right lower extremity effective June 22, 2022, as resolved.

FACTUAL HISTORY

On June 7, 2022 appellant, then a 20-year-old Reserved Officers' Training Corps (ROTC) student trainee, filed a traumatic injury claim (Form CA-1) alleging that on October 19, 2021 he

¹ 5 U.S.C. § 8101 *et seq.*

sustained right ankle pain and Achilles tendinitis of right lower extremity when he twisted his ankle running while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. Appellant stopped work on October 19, 2021.

On November 23, 2021 appellant was seen by Dr. Beatriz I. Lavell, a Board-certified family physician. Dr. Lavell related that appellant twisted his ankle on October 19, 2021 and although he could walk, the pain was still present. Appellant also related that he had not been able to run since the alleged incident. He indicated that he felt sudden pain in the back of his right ankle while jogging at the time. Dr. Lavell diagnosed right ankle pain and Achilles tendinitis of right lower extremity. Appellant was instructed to avoid running until December 15, 2021 and referred to physical therapy.

A physical therapy report dated November 30, 2021, noted appellant's history of right ankle pain while jogging for ROTC warm-up on October 19, 2021. It also noted that he reported that he had experienced right ankle soreness while driving during the past summer. Physical therapy notes dated December 9, 2021, indicate that appellant's right ankle pain was improving. Notes dated December 16, 2021 indicate that his ankle had improved and it was no longer painful.

On March 9, 2022 appellant was seen by Dr. Lezlie Painovich, an osteopathic family medicine specialist, as the supervising physician. Appellant related that he needed full medical clearance to return to ROTC activity. He also related that his ankle felt mostly back to normal and that he was not limited in activity. Dr. Painovich noted that on physical examination of the right ankle appellant had no edema or swelling, no point tenderness to the right ankle. Appellant had full range of motion of the ankles bilaterally, intact sensation, bilateral dorsalis pedis pulse, and normal gait with no limp. Dr. Painovich opined that appellant's diagnosed right ankle injury was now resolved and he could return to full activity so long as symptoms did not return.

An x-ray report of the right ankle dated March 28, 2022 and signed by Dr. Zachary Stewart, a diagnostic radiology specialist, found no acute fracture, but mild soft tissue swelling at the dorsum of the midfoot.

On March 28, 2022 appellant was seen by Hope Reddington, a physician assistant who related that he initially injured his right ankle in October 2021, received physical therapy, was improving, and was able to return to physical training for ROTC. Ms. Reddington reviewed the x-ray report of even date and diagnosed right ankle pain. She indicated that it was unlikely that appellant had a fracture or significant ligament injury, a bone cyst should be considered. Ms. Reddington also recommended that he a follow up with physical therapy if there was no improvement.

On May 13, 2022 appellant was seen by Dr. Elaine Hirschfield, a Board-certified family medicine physician, as the supervising physician. Dr. Hirschfield noted that appellant indicated that he was instructed to return as he needed an extension for his ROTC medical status. Appellant indicated that he had experienced continued right ankle pain since October 2021. Dr. Hirschfield related an impression of right ankle injury, with continued pain that changed every appointment from posterior, medial, now over the dorsum of the foot. She noted that appellant had complete functional use of the foot during weight training but had some minor pain. Dr. Hirschfield also

noted that he had not run mostly out of fear of pain, and lack of knowledge about rehabilitation. She recommended physical therapy with expected recovery in four to six weeks.

By decision dated June 22, 2022, OWCP advised appellant that it had accepted his claim for an episode of Achilles tendinitis, right lower extremity, resolved as of March 9, 2022, the date of Dr. Painovich's report. It related that no further benefits would be paid for the accepted diagnosis after June 22, 2022.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.² After it has determined that, an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁵ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁶

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits for the accepted condition of Achilles tendinitis of right lower extremity effective June 22, 2022, as resolved.

In a progress note dated March 9, 2022, Dr. Painovich opined that appellant's diagnosed right ankle injury was resolved and he could return to full activity. She noted that he related that his ankle felt mostly back to normal and that he was not limited in activity. Dr. Painovich noted that on physical examination appellant's right ankle had no edema or swelling, no point tenderness to the right ankle. Appellant had full range of motion of the ankles bilaterally, intact sensation, bilateral dorsalis pedis pulse, and normal gait with no limp. Dr. Painovich concluded that his diagnosed right ankle injury had resolved. The Board finds that OWCP properly relied upon her

² *C.F.*, Docket No. 21-0003 (issued January 21, 2022); *J.T.*, Docket No. 19-1723 (issued August 24, 2020); *S.P.*, Docket No. 19-0196 (issued June 24, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

³ *S.P.*, Docket No. 22-0393 (issued August 26, 2022); *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁴ *S.P.*, *id.*; *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

⁵ *S.P.*, *id.*; *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

⁶ *C.F.*, *supra* note 2; *M.E.*, Docket No. 20-0877 (issued August 17, 2021); *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

opinion, based upon objective medical findings, that appellant's Achilles tendinitis of right lower extremity had resolved as of March 9, 2022.

On May 13, 2022 Dr. Hirschfield diagnosed right ankle injury, with continued pain that changed every appointment from posterior, medial, now over the dorsum of the foot. She related that appellant had complete functional use of foot with weight training similar to before the injury notwithstanding some minor pain. Appellant was referred back to physical therapy for evaluation and to determine any further restrictions that he may still need later for his ROTC program, with expected recovery in four to six weeks. Dr. Hirschfield did not specifically opine that appellant continued to have residuals of the accepted condition. Rather she opined that appellant had complete functional use of appellant's foot and made note of his minor pain when weight training. The Board has previously explained that pain merely refers to a symptom, not a diagnosed condition.⁷ The Board further notes that OWCP terminated appellant's compensation benefits effective June 22, 2022. This report did not support continuing disability or need for further medical treatment after June 22, 2022.

Appellant was also seen by Ms. Reddington on March 28, 2022. Ms. Reddington diagnosed right ankle pain and recommended to follow up with physical therapy if there was no improvement. However, certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA and their reports do not constitute competent medical evidence.⁸

Accordingly, the Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits for the accepted condition of Achilles tendinitis of right lower extremity effective June 22, 2022, as resolved.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's compensation benefits effective June 22, 2022, as resolved.

⁷ *D.A.*, Docket No. 22-0762 (issued September 30, 2022); *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, not a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

⁸ 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); *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); *see also H.S.*, Docket No. 20-0939 (issued February 12, 2021) (physician assistants are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2022 decision of the Office of Workers' Compensation is affirmed.

Issued: April 4, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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