United States Department of Labor
Employees' Compensation Appeals Board

G.F., Appellant	)	
and	)	**Docket No. 22-1211**
	)	**Issued: December 18, 2023**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS & BORDER PROTECTION, El Paso, TX, Employer	)	

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
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On August 15, 2022 appellant filed a timely appeal from a July 29, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a left lower extremity condition in connection with the accepted November 28, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances as presented in the Board's prior order are incorporated herein by reference.[2] The relevant facts are set forth below.

On October 6, 2021 appellant, then a 49-year-old customs and border protection employee, filed a traumatic injury claim (Form CA-1) alleging that on November 28, 2018 he injured his left foot when he fell while simulating a one-person lift during training while in the performance of duty.[3] He asserted that when lifting, the second toe on his left foot became swollen and infected. On the reverse side of the claim form, appellant's supervisor indicated that appellant was injured in the performance of duty. Appellant did not stop work. He accepted a temporary full-time modified-duty position on October 14, 2021.

In an October 6, 2021 statement, appellant reported that following his fall on November 28, 2018 he experienced discomfort in his left foot and toes. He noted that after fractures of his three lesser toes on his left foot, all four of his lesser toes remained bent. Appellant asserted that on November 28, 2018 his second toe was swollen and suppurating. He sought medical attention and received antibiotics. Appellant continued to have an open wound, but his pain lessened. During September 2021, his second toe became swollen, and he again sought medical treatment. Appellant asserted that he was advised that his second toe was broken, infected and necrotic. He provided undated photographs.

In a signed report dated January 4, 2019, Dr. Gregory Lind, physician specializing in family medicine, provided International Classification of Disease (ICD-10) code L97.522, non-pressure chronic ulcer of the left foot with the fat layer exposed. In a separate note of even date, he diagnosed diabetic ulcer of the left fourth toe.

In an October 7, 2021 note, Katrina Rogers, an acute care nurse practitioner, diagnosed left foot second toe osteomyelitis, left diabetic foot ulceration with infection, and second toe hammer toe contracture deformity. Appellant underwent an unauthorized left foot surgery on October 7, 2021.

In a development letter dated October 18, 2021, OWCP informed appellant that additional medical evidence was needed to establish his claim. It advised him of the type of factual and medical evidence needed and afforded him 30 days to submit the necessary evidence.

Appellant completed the development questionnaire on October 23, 2021. He resubmitted the medical evidence already of record.

By decision dated November 23, 2021, OWCP accepted that the November 28, 2018 incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that

[2] *Order Remanding Case, G.F.*, Docket No. 22-0306 (issued June 22, 2022).

[3] Appellant had previous traumatic injury on May 9, 2018 accepted for nondisplaced closed fracture of the proximal phalanx of left toes three through five in OWCP File No. xxxxxx648. He stopped work on May 9, 2018 and retumed to full duty on August 21, 2018. On July 29, 2022 as directed by the Board, OWCP administratively combined the current claim with OWCP File No. xxxxxx648 serving as the master file. *Id.*

he had not submitted medical evidence containing a medical diagnosis from a qualified physician in connection with the accepted November 28, 2018 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

Appellant appealed to the Board on December 21, 2021. In its June 22, 2022 order, the Board directed OWCP to administratively combine appellant's left foot claims and issue a *de novo* decision.[4]

By decision dated July 29, 2022, OWCP accepted that the November 28, 2018 incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a medical diagnosis from a qualified physician in connection with the accepted November 28, 2018 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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 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. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and 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.[9]

[4] *Supra* note 2.

[5] *Supra* note 1.

[6] *J.W.*, Docket No. 23-0080 (issued May 23, 2023); *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] *J.W., id.*; *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.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).

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.[10] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 specific employment factors identified by the claimant.[11]

ANALYSIS

The Board finds that appellant has established a diagnosed medical condition in connection with the accepted November 28, 2018 employment incident.

In support of his claim, appellant submitted January 4, 2019 notes from Dr. Lind, wherein Dr. Lind diagnosed non-pressure chronic ulcer of the left foot and diabetic ulcer of the left fourth toe. Accordingly, the Board finds that appellant has established a diagnosed medical condition.

Consequently, the case must be remanded for consideration of the medical evidence as to whether appellant has met his burden of proof to establish that his diagnosed medical conditions are causally related to the accepted November 28, 2018 employment incident. Following this, and other such further development as deemed necessary, it shall issue a *de novo* decision on the issue of causal relationship.

CONCLUSION

The Board finds that the case is not in posture for decision.

[10] *D.D.*, Docket No. 22-0847 (issued September 16, 2022); *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).

[11] *J.R.*, Docket No. 22-0622 (issued July 25, 2022); *R.J.*, Docket No. 22-0202 (issued June 21, 2022); *L.W.*, Docket No. 21-1325 (issued May 3, 2022); *S.E.*, Docket No. 21-0666 (issued December 28, 2021); *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).

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2022 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 18, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board