United States Department of Labor
Employees' Compensation Appeals Board

H.A., Appellant	)	
and	)	**Docket No. 20-1267**
	)	**Issued: January 20, 2023**
DEPARTMENT OF THE AIR FORCE, AIR EDUCATION AND TRAINING COMMAND, LAUGHLIN AIR FORCE BASE, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 11, 2020 appellant filed a timely appeal from an April 7, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees'

[1] Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, appellant asserted that no one was able to make a connection from the original injury date to a relapse. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

ISSUE

The issue is whether appellant has met his burden of proof to establish a right ankle condition causally related to the accepted April 26, 2019 employment incident.

FACTUAL HISTORY

On May 8, 2019 appellant, then a 65-year-old flight simulator instructor, filed a traumatic injury claim (Form CA-1) alleging that on April 26, 2019[4] he sustained a twisted right ankle and pulled/torn tendons when landing wrong on the last step of a staircase while in the performance of duty. He stopped work on that date and returned on May 6, 2019.

An x-ray of appellant's right ankle obtained on May 1, 2019 demonstrated no acute fracture or dislocation with diffuse mild soft tissue swelling about the ankle.

On May 1, 2019 a nurse released appellant to return to work on May 6, 2019. Appellant, however, stopped work again on December 26, 2019.

An x-ray of appellant's right foot obtained on December 26, 2019 demonstrated no acute abnormality.

In a report dated December 26, 2019, Dr. Sarah Schmickrath, a physician Board-certified in emergency medicine, diagnosed foot sprain.

In a work excuse note dated December 26, 2019, a nurse released appellant to return to work on January 4, 2020. OWCP continued to receive work excuse notes holding appellant off work until March 30, 2020.

In a report dated January 5, 2020, Dr. Claudio Toledo, a Board-certified family practitioner, diagnosed chronic foot pain.

On February 26, 2020 appellant filed a notice of recurrence (Form CA-2a), indicating that his injury had recurred as of December 23, 2019. He explained that the pain in his right foot began to increase on about December 20, 2019 and he became unable to bear weight upon it as of

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that, following the April 7, 2020 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*.

[4] The claim form noted the date of injury as May 1, 2019; however, on May 29, 2019, appellant requested a change in the date of injury, noting that the claimed traumatic injury occurred on April 26, 2019, and that the date May 1, 2019 represented his first treatment with a physician.

December 23, 2019. Appellant stated that there was no other injury sustained since April 26, 2019.

In a development letter dated March 4, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP thereafter received a May 1, 2019 report wherein Dr. Jamie J. Gutierrez, a specialist in family and emergency medicine, noted appellant's history of injury and diagnosed foot ankle injury.

On January 15, 2020 Dr. Michael Roth, a podiatrist, diagnosed right ankle pain. Appellant told Dr. Roth that he injured his right ankle in April 2019 while at work.

In a report dated February 21, 2020, Dr. Roth noted appellant's history that he had injured his right ankle in April 2019, and that he was given time off from work in December due to right ankle pain. He diagnosed right ankle pain, right ankle osteochondrosis to talus, and left ankle sprain with edema.

By decision dated April 7, 2020, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted employment incident of April 26, 2019. It concluded, therefore, that the requirements had not been met to establish that he sustained an injury and/or medical condition causally related to the accepted employment incident.

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

[5] *Id*.

[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).

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.[9]

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[10] 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 incident identified by the employee.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right ankle condition causally related to the accepted April 26, 2019 employment incident.

In a May 1, 2019 report, Dr. Gutierrez noted a diagnosis of right foot ankle injury. However, he did not provide an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[12] This report is, therefore, insufficient to establish appellant's claim.

On December 26, 2019 Dr. Schmickrath diagnosed foot sprain. On February 21, 2020 Dr. Roth diagnosed, *inter alia*, right ankle osteochondrosis to talus. While these reports reviewed appellant's history of injury and contained medical diagnoses, they did not offer a medical opinion regarding the cause of appellant's diagnosed conditions. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[13] This evidence is therefore insufficient to establish the claim.

Appellant submitted additional reports from Drs. Toledo and Roth. On January 4, 2020 Dr. Toledo diagnosed chronic foot pain. On January 15, 2020 Dr. Roth diagnosed right ankle pain.

[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).

[10] *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] *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).

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

[13] *Id*.

As neither physician provided an opinion on causal relationship, these reports are also of no probative value and are insufficient to establish the claim.[14]

OWCP also received a series of work excuse notes from a nurse. The Board has held that certain healthcare providers such as nurses and nurse practitioners are not considered physicians as defined under FECA.[15] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

Appellant submitted diagnostic reports dated May 1 and December 26, 2019. The Board has held that diagnostic test reports, standing alone, lack probative value as they do not provide an opinion on causal relationship between the employment incident and a diagnosed condition.[16]

As appellant has not submitted rationalized medical evidence establishing that his diagnosed medical conditions were causally related to the accepted employment incident of April 26, 2019, the Board finds that he 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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right ankle condition causally related to the accepted April 26, 2019 employment incident.

[14] *Id*.

[15] Section 8102(2) of FECA provides as follows: (2) 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* 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 P.S.*, Docket No. 17-0598 (issued June 23, 2017) (registered nurses are not considered physicians as defined under FECA).

[16] *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 20, 2023
Washington, DC

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

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

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