

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

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<b>W.R., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-0253</b>
	)	<b>Issued: July 7, 2023</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>VETERANS HEALTH ADMINISTRATION,</b>	)	
<b>MEDICAL CENTER, Lake City, FL, Employer</b>	)	
_____	)	

*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:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On December 13, 2022 appellant, through counsel, filed a timely appeal from a December 1, 2022 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 left foot condition causally related to the accepted factors of his federal employment.

## FACTUAL HISTORY

On February 13, 2022 appellant, then a 50-year-old police officer, filed an occupational disease claim (Form CA-2) alleging that duties of his federal employment including daily walking and running, apprehending suspects, and carrying 35 pounds of gear resulted in calcaneal fractures of the heel, pain in the right forearm, degenerative joint disease, and aggravation of osteoarthritis in the knees. He noted that he had previously filed workers' compensation claims in 2014 under OWCP File Nos. xxxxxx307, xxxxxx308, and that his prior injuries had worsened to their current status.<sup>3</sup> Appellant noted that he first became aware of his condition on September 23, 2014 and realized its relation to his federal employment on October 13, 2021. He did not stop work.

In a supplemental statement accompanying the claim, appellant further explained that employing establishment policy mandated that he wear a bullet resistant vest weighing 5 to 8 pounds, a duty belt containing handcuffs, firearms, ammunition, baton and other items weighing between 27 to 30 pounds. He also related that depending on the type of emergency he was responding to he might also wear a bullet resistant helmet weighing approximately 3 to 4 pounds, a ballistic shield weighing 17 to 20 pounds, a flak jacket weighing 3 to 4 pounds, and an AR-15 rifle weighing approximately 6 to 8 pounds. Appellant also indicated that on customer service calls he might carry additional items including a battery jump starter, large lock cutters, and traffic cones. He related that movement while wearing or carrying these items over the years caused or aggravated his conditions, as he was usually "sore or limp" for days after utilizing the described equipment. Appellant further described his employment duties which required response to emergency call for assistance, bomb threats, medical emergencies, criminal acts, and disturbances. To reach the emergency locations he had to walk, run, use elevators, climb stairs, or use patrol vehicles. Appellant further described the repetitive motions involved in carrying out his employment duties.

In a report dated October 13, 2021, Dr. Jason Levitre, a podiatrist, diagnosed acquired bilateral hallux valgus. He noted that appellant also exhibited fragmentation of the left posterior heel, which was evidence of old fractures with fragmentation of the posterior calcaneal tuberosity and Achilles insertion. Dr. Levitre compared appellant's current radiological studies of his feet to a September 26, 2014 x-ray study, noting that that result did not adequately explain the separation of bone fragments from the insertion point. He stated that this result was best explained by a previous injury to the calcaneus, where they were pulled off or avulsed, with a greater fragment on the left than the right. In an attached letter, Dr. Levitre stated that appellant was permanently disabled.

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<sup>3</sup> The record reflects that appellant has two prior claims before OWCP. Under OWCP File No. xxxxxx307, OWCP denied appellant's traumatic injury claim for a September 27, 2014 right foot injury. Under OWCP File No. xxxxxx308, it accepted appellant's traumatic injury claim for a September 23, 2014 contusion of the left foot and ankle.

In a development letter dated March 2, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical evidence needed and afforded him 30 days to respond. No response was received.

By decision dated April 4, 2022, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish a diagnosed condition causally related to the accepted factors of his federal employment.

On May 19, 2022 appellant requested reconsideration. With his request, he submitted a March 30, 2022 report from Dr. Richard Cunningham, a Board-certified orthopedic surgeon. Dr. Cunningham diagnosed traumatic arthropathy of the left ankle and foot, left Achilles tendinitis, enthesopathy of the left foot and ankle, primary osteoarthritis of the left foot and ankle, contracture of muscle of the left foot and ankle, and a calcaneal spur of the left foot. He opined that a traumatic incident on September 23, 2014 involving an encounter with an unruly suspect led to appellant's injuries. Dr. Cunningham explained that the passive mechanical properties of appellant's joints were affected by a kinematic chain of activities, such as gait movement patterns and bone alignment. He opined that subsequent to the encounter on September 23, 2014, the chain of events and continued overuse of his feet and ankle without proper healing over the last eight years had increased appellant's foot pronation, with compromise of ankle dorsiflexion, overloading his body. On physical examination, Dr. Cunningham noted joint pain, joint stiffness, joint swelling, muscle aches, pain with movement, and back and neck pain. On examination of the left foot, he observed a valgus deformity with a bunion, pain over the left medial ankle and plantar aspect, worse over the left heel compared with the right. On examination of the right foot, Dr. Cunningham noted a valgus deformity with a bunion, pain over the right medial ankle and plantar aspect, worse on the heel. X-ray studies of the left foot and ankle demonstrated hallux valgus and valgus deformity of the left first metatarsal; displacement of the first and distal metatarsophalangeal joints to a moderate degree, as well as degenerative changes through the first, middle, and proximal phalanges. Dr. Cunningham further observed degenerative changes of the superior distal talus, calcaneus with posterior calcification of the Achilles tendon, a free body fragment and a calcaneus osteophyte within the plantar fascia.

By decision dated August 9, 2022, OWCP denied modification of its prior decision.

On November 10, 2022 appellant, through counsel, requested reconsideration and submitted a report from Dr. Cunningham dated August 22, 2022 explaining the mechanism of appellant's left foot and ankle injury, stating that appellant had an underlying condition that made the injury on September 23, 2014 susceptible to further aggravation. Dr. Cunningham noted that OWCP denied the injury of September 23, 2014 as work related, finding that it did not occur as described. He related that the calcaneus was often compared to a hardboiled egg because it had a thin, hard shell on the outside, and softer spongy bone on the inside. When the outer shell was broken, the bone tended to collapse and become fragmented, resulting in severe injury. Dr. Cunningham further related that appellant suffered a calcaneous fracture as well as left Achilles tendinitis in 2014 without it healing properly and continued use of his left foot caused chronic stress fracture by overuse of his left foot/ankle. He further explained that the continued overuse of his feet and ankles without proper healing over the last eight years had increased his foot pronation with compromise of ankle dorsiflexion, overloading his body. Dr. Cunningham

explained how a severely pronated foot resulted from the striking force of the September 23, 2014 incident and subsequent overuse.

By decision dated December 1, 2022, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</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, 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.

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.<sup>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background, 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 factors.<sup>8</sup>

### **ANALYSIS**

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

The record indicates that appellant has two prior claims for foot and ankle injuries. OWCP accepted OWCP File No. xxxxxx308 for left foot and ankle contusion.

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *C.K.*, Docket No. 19-1549 (issued June 30, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>7</sup> *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

OWCP's procedures provide that cases should be administratively combined when correct adjudication depends on cross-referencing between files and when two or more injuries occur to the same part of the body.<sup>9</sup>

As appellant's claims under OWCP File Nos. xxxxxx 451, xxxxxx307 and xxxxxx308 all involve injuries to the lower extremities, these claims shall be administratively combined for a full and fair adjudication.<sup>10</sup> This will allow OWCP to consider all relevant claim files and accompanying evidence in developing this claim.

On remand, OWCP shall administratively combine the case records for OWCP File Nos. xxxxxx307 and xxxxxx308 with the current record.<sup>11</sup> It shall then refer appellant, along with the case record and a statement of accepted facts, to a specialist in the appropriate field of medicine. OWCP's referral physician shall provide a well-rationalized opinion as to whether appellant's diagnosed lower extremity conditions are causally related to or aggravated by the accepted factors of his federal employment. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why the opinion differs from that of Dr. Cunningham. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### CONCLUSION

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

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<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

<sup>10</sup> *K.G.*, Docket No. 21-0068 (issued July 29, 2022); *D.J.*, Docket No. 20-0997 (issued November 20, 2020); *S.D.*, Docket No. 19-0590 (issued August 28, 2020).

<sup>11</sup> OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files. Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000). For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 1, 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: July 7, 2023  
Washington, DC

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

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

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