

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

M.B., Appellant	)	
	)	
and	)	<b>Docket No. 23-0367</b>
	)	<b>Issued: July 10, 2023</b>
DEPARTMENT OF JUSTICE, BUREAU OF	)	
PRISONS, U.S. PENITENTIARY MCCREARY,	)	
Pine Knot, KY, Employer	)	
	)	

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On January 17, 2023 appellant, through counsel, filed a timely appeal from a December 13, 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.<sup>3</sup>

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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 an 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.*

<sup>3</sup> The Board notes that, following the December 13, 2022 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.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a lower extremity condition causally related to the accepted March 31, 2022 employment incident.

## FACTUAL HISTORY

On April 1, 2022 appellant, then a 40-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on March 31, 2022 he developed redness and swelling of his Achilles tendons and feet when he responded to a call for staff assistance while in the performance of duty.<sup>4</sup> He stopped work on April 1, 2022.

In support of his claim, appellant submitted an April 1, 2022 work excuse note from John Partin, a registered nurse, holding him off work pending an orthopedic consultation.

OWCP received x-ray reports dated April 1, 2022. An x-ray of appellant's left ankle and foot revealed a moderate/large dorsal calcaneal spur and x-rays of his right foot and ankle revealed an impression of a moderate dorsal calcaneal spur. In a note of even date, Mr. Partin treated appellant for joint pain of both ankles which appellant indicated began the previous day when he injured his ankles while assisting officers in an altercation at the prison. He related that appellant had a previous injury to his ankle tendons and diagnosed bilateral Achilles tendinitis, unspecified leg, and pain in unspecified foot. Mr. Partin referred appellant to an orthopedic specialist.

In an April 12, 2022 note, Mr. Partin treated appellant for bilateral foot pain and diagnosed bilateral Achilles tendinitis, unspecified leg, and pain in unspecified foot, bilateral. OWCP also received a medical authorization request and referral of even date from Mr. Partin for treatment of appellant's bilateral foot and ankle pain.

In an April 27, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the additional evidence needed to establish his claim and provided a factual questionnaire for his completion. OWCP afforded appellant 30 days to respond.

Thereafter, OWCP received an April 14, 2022 initial evaluation from Dr. Barret Lessenberry, a Board-certified orthopedic surgeon, relating that appellant was experiencing bilateral heel pain, left worse than right, that began approximately four years ago around the same time as a previous work-related injury. Dr. Lessenberry noted that appellant worked at a correctional facility where he was sometimes required to run. He diagnosed Haglund's deformity of the left side and provided gel pads to lift the heel.

In a visit note dated April 25, 2022, Mr. Partin diagnosed pain in unspecified foot, bilateral, and reiterated his recommendation of rest, ice, compression, and elevation.

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<sup>4</sup> Appellant previously filed a September 17, 2018 Form CA-1 alleging that on that date he strained his Achilles and developed tendinitis and heel spurs when he responded to a prison incident and stepped from grass onto concrete, turned, and felt a sharp pain in his lower legs and ankles while in the performance of duty. OWCP assigned that claim OWCP File No. xxxxxx560 and has administratively combined the claims, with the present claim under OWCP File No. xxxxxx457 serving as the master file.

In an April 29, 2022 report, Dr. Lessenberry related that appellant had experienced some improvement to appellant's Achilles pain on the left side at the insertion site where he has a Haglund's deformity. He indicated that appellant also had discomfort on the right side near the Achilles insertion where a small bulge in the Achilles was located. Dr. Lessenberry noted that appellant's work duties included aggressive activities such as responding to prison inmates.

By decision dated June 3, 2022, OWCP accepted that the March 31, 2022 employment incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed medical conditions and the accepted March 31, 2022 employment incident.

On July 1, 2022 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which took place on November 8, 2022.

OWCP continued to receive evidence, including an August 11, 2022 presurgery order from an unidentifiable healthcare provider for a left Haglund's deformity resection with Achilles repair.

By decision dated December 13, 2022, OWCP's hearing representative affirmed the June 3, 2022 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> 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,<sup>6</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>7</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>8</sup>

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 whether he or she actually experienced the employment incident at the time, 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.<sup>9</sup>

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> *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).

<sup>7</sup> *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).

<sup>8</sup> *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).

<sup>9</sup> *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 between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>10</sup> 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 the specific employment incident identified by the claimant.<sup>11</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lower extremity condition causally related to the accepted March 31, 2022 employment incident.

In his April 14 and 29, 2022 reports, Dr. Lessenberry diagnosed Haglund's deformity of the left side. However, he did not provide an opinion on causal relationship in these reports. The Board has held that a medical report 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.<sup>13</sup> As such, Dr. Lessenberry's reports are insufficient to establish appellant's claim.

In an April 1, 2022 work excuse note and visit note, Mr. Partin, a registered nurse, held appellant off work and diagnosed bilateral Achilles tendinitis, unspecified leg, and pain in unspecified foot. Appellant also submitted April 12 and 25, 2022 reports from Mr. Partin. However, certain healthcare providers such as nurses and physician assistants are not considered "physician[s]" as defined under FECA.<sup>14</sup> Consequently, their medical findings or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>15</sup>

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<sup>10</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).

<sup>11</sup> *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

<sup>13</sup> *See D.Y.*, Docket No. 20-0112 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>14</sup> Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as 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 supra* note 12 at 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 G.F.*, Docket No. 23-0114 (issued May 12, 2023) (registered nurses are not considered qualified physicians as defined under FECA).

<sup>15</sup> *See G.F., id.*; *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk, id.*

OWCP also received August 11 and 12, 2022 forms from an unidentifiable healthcare provider. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.<sup>16</sup> Therefore, these forms are insufficient to establish appellant's claim.

The remaining evidence of record includes April 1, 2022 x-ray reports. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.<sup>17</sup> Therefore, this evidence is also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical opinion evidence establishing a lower extremity condition causally related to the accepted March 31, 2022 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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 lower extremity condition causally related to the accepted March 31, 2022 employment incident.

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<sup>16</sup> *L.B.*, Docket No. 21-0353 (issued May 23, 2022); *T.D.*, Docket No. 20-0835 (issued February 2, 2021); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>17</sup> *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 13, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2023  
Washington, DC

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

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

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