

ISSUE

The issue is whether appellant has met his burden of proof to establish a left foot condition causally related to the accepted February 19, 2020 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 19, 2020 appellant, then a 55-year-old distribution operations supervisor, filed a traumatic injury claim (Form CA-1) alleging that he injured his left foot on that day when he felt a "pop" and instant pain in his foot when walking up two flights of stairs while in the performance of duty. OWCP assigned OWCP File No. xxxxxx594.⁴

On April 8, 2020 OWCP denied appellant's current traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or event(s) occurred, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant requested reconsideration on April 24, 2020. With his request, he submitted a statement of even date in which he responded to OWCP's development letter and described the alleged incident of February 19, 2020. Appellant explained that he had foot pain as a result of a previous injury under OWCP File No. xxxxxx569. While the current claim was a new injury, reports from his physicians had been submitted under OWCP File No. xxxxxx569.

An x-ray of appellant's left foot obtained on February 19, 2020 demonstrated lateral forefoot soft tissue swelling with no acute fracture.

In a state workers' compensation form report dated March 10, 2020, Dr. Paul Fortier, an internist, diagnosed a left foot injury, plantar fascial fibromatosis of the left foot, chronic pain of the left foot, and left foot neuropathy. He checked a box indicating that there was a preexisting condition contributing to appellant's contemporaneous condition, representing an exacerbation. By checking another box, Dr. Fortier indicated that the incident of February 19, 2020 was a major contributing cause to his diagnoses.

³ Docket No. 20-1356 (issued December 17, 2021).

⁴ Appellant had previously sustained a traumatic injury to his left foot on May 4, 2010 when he stepped on uneven pavement, which OWCP accepted for left foot sprain, ankle sprain, and plantar fibromatosis under OWCP File No. xxxxxx569. OWCP also accepted a recurrence of disability, effective March 19, 2013, under that claim. Appellant returned to limited-duty work on May 20, 2014. On February 24, 2020 he filed a notice of recurrence (Form CA-2a), also under OWCP File No. xxxxxx569, alleging that a recurrence of disability occurred on February 19, 2020 due to swelling of the foot, severe pain, and weakness. OWCP has administratively combined OWCP File Nos. xxxxxx594 and xxxxxx569, with the former serving as the master file.

In a state workers' compensation form report dated March 25, 2020, Dr. Fortier diagnosed plantar fascial fibromatosis of the left foot, chronic pain of the left foot, and left foot neuropathy. He left boxes regarding causation and aggravation unchecked.

In a report dated March 11, 2020, Dr. Remone T. Yousif, a Board-certified pain medicine specialist, diagnosed plantar fasciitis, neuropathy, and plantar fascial fibromatosis of the left foot. Appellant stated that, 10 years prior, he experienced a work-related injury and was diagnosed with plantar fasciitis and plantar fascial fibromatosis. His left foot pain was exacerbated on February 19, 2020 when he walked upstairs and heard a "pop" in his left foot. On physical examination of the left foot, appellant observed a medial plantar fibroma, tenderness to palpation and allodynia, limited range of motion on dorsiflexion, plantar flexion, inversion, and eversion, and a positive plantar fasciitis test.

In a letter dated April 3, 2020, Dr. Steven Brown, an osteopathic family medicine specialist, stated that appellant had been under his care for a chronic left foot problem following a work-related injury on May 4, 2010. He noted that appellant subsequently developed neuropathic pain and plantar fibromatosis of the left foot. On February 19, 2020 appellant's symptoms acutely worsened when he walked upstairs, heard a "pop," and felt acute pain in the bottom of the left foot, restricting him from weight-bearing, and walking. On physical examination, Dr. Brown observed swelling in the plantar midfoot on the left with some pinkish discoloration and acute tenderness. He stated that it was unlikely that surgical intervention would relieve appellant's symptoms and that he was totally disabled from work.

In a state workers' compensation form report dated May 14, 2020, Dr. Fortier diagnosed neuropathy and plantar fascial fibromatosis of the left foot. He left boxes regarding causation and aggravation unchecked.

By decision dated June 19, 2020, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant merit review, pursuant to 5 U.S.C. § 8128(a).

In another May 14, 2020 report, Dr. Fortier noted that he had followed up with appellant. He diagnosed neuropathy and plantar fascial fibromatosis of the left foot.

In a note dated August 4, 2020, Dr. Brown diagnosed plantar fascia fibromatosis of both feet, chronic left foot pain, and neuropathic pain of the left foot. He noted that he had treated appellant as a patient for at least 15 years. Dr. Brown stated that appellant developed left foot pain after carrying mail in 2010. In 2013, appellant was diagnosed with plantar fascia tear. He returned to full-time work until his symptoms worsened in 2017, when weight-bearing became more problematic, and was given work restrictions regarding walking and standing. The symptoms persisted through 2018 and 2019. Dr. Brown noted that appellant's symptoms had a component of diabetic nerve damage, but that appellant's symptoms were dramatically worse on the left, making it unlikely that the diabetic nerve damage was the cause of his dominant symptoms. In February 2020, appellant's symptoms acutely worsened after he walked upstairs and heard a "pop" in his left foot. Dr. Brown opined that appellant had reached maximum medical improvement (MMI).

On June 29, 2020 appellant appealed to the Board.

In a report dated August 18, 2020, Dr. Yousif diagnosed left foot neuropathy and pain. On physical examination of the left foot, he noted erythema in the medial aspect, tenderness over the dorsal aspect, and an antalgic gait with use of a cane.

In progress notes dated May 5, 2021, Dr. Fortier followed up with appellant for left foot pain. Appellant stated that his condition had improved. Dr. Fortier diagnosed plantar fascial fibromatosis of the left foot and neuropathy. On physical examination of the left foot, he observed a fibrotic lump in the middle of the plantar aspect, with less tenderness compared to appellant's previous visit.

By decision dated December 17, 2021, the Board found that appellant had not met his burden of proof to establish a left foot condition sustained in the performance of duty on November 26, 2019, as alleged. However, the Board further found that the case was not in posture for decision as to whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, as OWCP had not reviewed his April 24, 2020 response to its February 26, 2020 development letter, received prior to issuance of its June 19, 2020 decision. The Board remanded the case to OWCP to properly consider all evidence submitted prior to the June 19, 2020 nonmerit decision.

In an April 21, 2022 *de novo* decision, OWCP reviewed the merits of appellant's claim and found that he had established that the incident of February 19, 2020 occurred as described. However, it denied his claim, finding that he had not submitted sufficient medical evidence to establish causal relationship between his diagnosed conditions and the accepted February 19, 2020 employment incident.

On May 3, 2022 appellant requested reconsideration. With his request, he resubmitted the April 3, 2020 note from Dr. Brown. Appellant also submitted a May 3, 2022 note from Dr. Brown to clarify the April 3, 2020 note. Dr. Brown opined that when appellant walked upstairs while in the performance of duty on February 19, 2020 appellant sustained a tear of the plantar fascia of the left foot. He noted that this was the region of appellant's previous fibromatosis and that the incident was responsible for appellant's symptoms and physical findings documented at that time and immediately afterward. Dr. Brown further stated that "it was this mechanism of injury and diagnosis that was responsible" for appellant's continued left foot issues.

By decision dated May 5, 2022, OWCP denied modification of its April 21, 2022 decision. It found that the April 3, 2020 note from Dr. Brown did not contain a rationalized medical opinion as to how the one-time event of walking upstairs on February 19, 2020 caused a tear of appellant's left plantar fascia, given that he already had a left plantar fascial tear from a May 4, 2010 work-related injury. OWCP further noted that Dr. Brown provided only a general and conclusory statement of causal relationship.

On June 1, 2022 appellant again requested reconsideration. With his request he submitted a June 1, 2022 letter from Dr. Brown. Dr. Brown explained that appellant had previously suffered a plantar fascia tear in 2010; however, he noted that at the time of the February 19, 2020 incident, that tear had resolved, leaving appellant with ongoing plantar fibromatosis and plantar fasciitis.

These conditions had been intermittently exacerbated, but were chronic and nonacute. Dr. Brown opined that the injury sustained on February 19, 2020 while walking upstairs was traumatic in nature and represented the acute onset of a completely new and separate plantar fasciitis tear, as evidenced by appellant's sudden and acute onset of severe pain, the noted sensation of a "pop," and the sudden inability to bear weight.

By decision dated August 3, 2022, OWCP denied modification of its May 5, 2022 decision. It found that the June 1, 2022 note from Dr. Brown was insufficiently rationalized to establish causal relationship between the February 19, 2020 employment incident and appellant's diagnosed conditions.

On August 4, 2022 appellant again requested reconsideration. With his request for reconsideration, he submitted a statement requesting OWCP review evidence in both OWCP File Nos. xxxxxx594 and xxxxxx569.

By decision dated October 28, 2022, OWCP denied modification of its August 3, 2022 decision. It found that appellant had not submitted rationalized medical evidence establishing a causal relationship between the February 19, 2020 incident and his diagnosed conditions.

On April 11, 2023 appellant, through counsel requested reconsideration of OWCP's October 28, 2022 decision. With his request, appellant submitted an April 5, 2023 note from Dr. Brown, in which he explained that appellant had a well-documented history of left foot issues secondary to remote plantar fascia injury in 2010 and resultant fibromatosis. In 2019, he was examined and found to have fibromas, but no tears. Appellant was living with some degree of chronic pain and continued to work as of the incident of February 19, 2020. On that date, he ascended stairs at work when he noted a "pop" sound and experienced dramatic onset of pain. Subsequent examination demonstrated that the plantar surface of the foot-which had well-documented fibromas and thickening of the plantar fascia, to have increased overt swelling and a red-pink coloration. Appellant reached MMI in August 2020. Dr. Brown explained that, when appellant ascended the stairs, he placed the maximum possible stretch mechanism force on the baseline fibrotic plantar fascia. He noted that the foot must be dorsiflexed to reach the stair step. The windlass mechanism principle stated that the dorsiflexion phase of the gait winds the plantar fascia around the head of the metatarsal, thus increasing the tension on the fascia as it runs to the insertion on the calcaneus. Dr. Brown opined that the "pop" appellant heard, the acute pain he experienced, the notable increase in swelling with red discoloration, and finally improvement after prolonged rest were consistent with and indicative of longitudinal micro-tearing of the fascial tissue through this mechanism.

By decision dated April 13, 2023, OWCP denied modification of its October 28, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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

⁵ *Supra* note 2.

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, 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

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 factors identified by the employee.¹¹

ANALYSIS

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

On May 3, 202 Dr. Brown opined that when appellant walked upstairs while in the performance of duty on February 19, 2020 appellant sustained a tear of the plantar fascia of the left foot. He noted that this was the region of appellant's previous fibromatosis, and that the incident was responsible for appellant's symptoms and physical findings documented at that time and immediately afterward. Dr. Brown further stated that this was the mechanism of injury and the diagnosis that was responsible for appellant's continued left foot issues. On a June 1, 2022 he explained that appellant had previously suffered a plantar fascia tear in 2010; however, he noted

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).

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).

that at the time of the February 19, 2020 incident, that tear had resolved, leaving appellant with ongoing plantar fibromatosis and plantar fasciitis. These conditions had been intermittently exacerbated but were chronic and nonacute. Dr. Brown opined that the injury sustained on February 19, 2020 while walking upstairs was traumatic in nature and represented the acute onset of a completely new and separate plantar fasciitis tear, as evidenced by appellant's sudden and acute onset of severe pain, the noted sensation of a "pop," and the sudden inability to bear weight. On April 5, 2023 he explained that appellant had a well-documented history of left foot issues secondary to remote plantar fascia injury in 2010 and resultant fibromatosis. In 2019, appellant was examined and found to have fibromas, but no tears. He was living with some degree of chronic pain and continued to work as of the incident of February 19, 2020. On that date, appellant ascended stairs at work when he noted a "pop" sound and experienced dramatic onset of pain. Subsequent examination demonstrated that the plantar surface of the foot-which had well-documented fibromas and thickening of the plantar fascia, to have increased overt swelling and a red-pink coloration. Dr. Brown explained that, when appellant ascended the stairs, he placed the maximum possible stretch mechanism force on the baseline fibrotic plantar fascia. He noted that the foot must be dorsiflexed to reach the stair step. The windlass mechanism principle stated that the dorsiflexion phase of the gait winds the plantar fascia around the head of the metatarsal, thus increasing the tension on the fascia as it runs to the insertion on the calcaneus. Dr. Brown opined that the "pop" appellant heard, the acute pain he experienced, the notable increase in swelling with red discoloration, and finally improvement after prolonged rest were consistent with and indicative of longitudinal micro-tearing of the fascial tissue through this mechanism.

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹² OWCP has an obligation to see that justice is done.¹³

While the reports from Dr. Brown are insufficient to establish the claim, they are sufficient to require further development of the medical evidence.¹⁴ The case must therefore be remanded for further development.¹⁵

On remand, OWCP shall refer appellant to a specialist in the appropriate field of medicine. Its referral physician shall provide a well-rationalized opinion as to whether appellant's diagnosed left foot conditions were causally related to or aggravated by the accepted employment incident of February 19, 2020. 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. Brown. After

¹² See *id.* See also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹³ See *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, *supra* note 9.

¹⁴ *John J. Carlone*, *id.*; see also *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).

¹⁵ *J.H.*, *supra* note 7; *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

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.

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2023 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: October 5, 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