

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

_____)
R.M., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
FEDERAL PROTECTIVE SERVICE,)
San Antonio, TX, Employer)
_____)

Docket No. 23-0726
Issued: September 26, 2023

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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 23, 2023 appellant filed a timely appeal from a November 21, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the November 21, 2022 decision, OWCP received additional evidence. However, 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 met his burden of proof to establish a lower right extremity condition causally related to the accepted September 30, 2022 employment incident.

FACTUAL HISTORY

On October 1, 2022 appellant, then a 53-year-old Federal Protective Service inspector, filed a traumatic injury claim (Form CA-1) alleging that on September 30, 2022 he sustained a right calf injury in the performance of duty. He explained that he sustained an injury when he stepped in to stop a physical altercation which occurred at an automotive service center while having his employing establishment vehicle serviced. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty, but indicated that he was injured by a third party. The form further indicated that he stopped work on September 30, 2022.

On September 30, 2022 appellant was treated in an emergency department by Dr. Alexander Norinsky, a Board-certified emergency medicine osteopath. He underwent a lower extremity venous ultrasound performed by Dr. Allan Traux, a Board-certified diagnostic radiologist. Appellant related right calf pain and edema. The doppler study was positive for deep vein thrombosis (DVT) with nonocclusive thrombus in the right popliteal vein, and fluid collection within the right calf. Findings also indicated a hematoma in the right calf or possibly complex Baker's cyst or other etiology.

Appellant submitted a narrative statement dated October 1, 2022. He related that he was leaving the automotive service center when he saw two individuals fighting each other and heard someone shout, "go get the cop." After stepping in to separate the two individuals and shoving the one of them backwards, appellant felt a "muscle cramp" tighten his right calf as he pushed off his right foot. The pain continued, and the area began to swell. Appellant reported the injury to his supervisor and drove himself to the hospital for further evaluation.

In a development letter dated October 11, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a completed development questionnaire dated October 25, 2022, appellant responded that he did not seek treatment for his lower right extremity prior to September 30, 2022, and further indicated that he only travelled twice by air in 2022. He also submitted itineraries for flights taken in March and July 2022.

On October 4, 2022 appellant was seen in an emergency department by Dr. Peter J. Carlson, a Board-certified emergency medicine physician. Appellant related that he was stopping a physical altercation, and in pressing off of his right calf, he felt a cramp sensation. He continued to have pain. Appellant was diagnosed with gastrocnemius muscle tear and nonocclusive thrombus.

By decision dated November 21, 2022, OWCP accepted that the September 30, 2022 employment incident occurred as alleged, and that a medical condition was diagnosed, and that appellant was in the performance of duty. However, it denied his claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed condition and the accepted September 30, 2022 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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, 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.⁴ 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.⁵

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.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.⁸ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment,

³ *Id.*

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *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).

⁷ *R.P.*, Docket No. 21-1189 (issued July 29, 2022); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *R.P.*, *id.*; *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *Id.*

nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lower right extremity condition causally related to the accepted September 30, 2022 employment incident.

Appellant submitted an emergency department note dated September 30, 2022 from Dr. Norinsky, which indicated that appellant had undergone a lower right extremity venous ultrasound performed by Dr. Traux. The report indicated diagnoses of DVT with nonocclusive thrombus in the right popliteal vein; and fluid collection within the right calf; as well as hematoma in the right calf or possibly complex Baker's cyst or other etiology. Dr. Norinsky, however, did not specifically address the cause of appellant's conditions with a rationalized medical opinion explaining how the employment incident would have physiologically caused the diagnosed conditions. The Board has held that medical evidence offering no opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹¹ This report is, therefore, insufficient to establish appellant's claim.

In an October 4, 2022 note, Dr. Carlson noted appellant's diagnoses as gastrocnemius muscle tear and nonocclusive thrombus. However, he again offered no opinion regarding causal relationship. As explained above, medical evidence offering no opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹² This report is also insufficient to establish appellant's claim.

Appellant also submitted narrative statements in support of his claim. As noted above, causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹³ A lay opinion regarding causal relationship does not constitute probative medical evidence.¹⁴ These statements are therefore insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed medical condition and the accepted September 30, 2022 employment incident, 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.

¹⁰ *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

¹¹ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *Id.*

¹³ *Id.*

¹⁴ *See E.H.*, Docket No. 19-0365 (issued March 17, 2021).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a lower right extremity condition causally related to the accepted September 30, 2022 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 26, 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