

FACTUAL HISTORY

On October 31, 2022 appellant, then a 52-year-old clerk typist, filed an occupational disease claim (Form CA-2) alleging that she sustained an Achilles tendon strain and bone spur due to factors of her federal employment and underwent surgery on April 14, 2022. She noted that she first became aware of her conditions on November 8, 2021 and realized their relationship to her federal employment on October 21, 2022. Appellant stopped work on April 14, 2022.

Appellant submitted a summary of treatment for the period October 21, 2021 through October 21, 2022 by an unidentifiable healthcare provider, for left Achilles tendinitis, cubital tunnel syndrome, lesion of the ulnar nerve, and hammertoe of the left foot.

In an October 31, 2022 statement, appellant reported pain and swelling in the heel of her foot starting in the fall of 2021. She was diagnosed with Achilles tendinitis and bone spur, and subsequently had surgery on April 14, 2022. Appellant returned to limited-duty work on July 18, 2022 and continued to experience severe pain and discomfort in the left heel. She indicated that repetitive standing, squatting, and lifting required in her job aggravated her left foot condition.

In a November 8, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim, and provided a questionnaire for her completion. By separate letter of even date, OWCP also requested additional information from the employing establishment. It afforded both parties 30 days to respond.

In an attending physician's report (Form CA-20) dated December 6, 2022, Dr. Scott Nemec, an attending osteopath and orthopedic surgery specialist, diagnosed left Achilles tendinitis. He checked a box marked "Yes," indicating that the diagnosed condition was caused or aggravated by the described employment factors. Dr. Nemec noted that appellant was totally disabled from April 14 through July 18, 2022.

By decision dated January 5, 2023, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish an injury or condition causally related to the accepted factors of her federal employment.

OWCP thereafter received additional medical evidence. In a note dated July 12, 2022, Dr. Nemec returned appellant to work four hours a day with restrictions for two weeks and increased work hours as tolerated. Similarly, on December 9, 2022 he returned her to work with restrictions on sitting and standing.

On September 30, 2022 Taylor Fisher, a physician assistant, returned appellant to work on October 3, 2022 with restrictions.

OWCP also received illegible notes dated September 30 and October 21, 2022 and a physician's narrative report from an unidentifiable healthcare provider.

On January 27, 2023 appellant requested reconsideration of the January 5, 2023 decision.

By decision dated April 25, 2023, OWCP denied modification of the January 5, 2023 decision.

On May 30, 2023 appellant requested reconsideration. In an undated statement, she indicated that her diagnosed Achilles tendinitis was caused by repetitive bending, walking, and lifting while standing on cement floors at work.

Appellant submitted additional medical evidence from Dr. Nemec who treated her on March 8, 2022 for left toe pain. Dr. Nemec diagnosed hammertoe of the fourth toe of the left foot. On April 14, 2022 he performed left Achilles debridement and repair, left flexor hallucis longus tendon transfer, and left foot excision of Haglund's deformity. Dr. Nemec diagnosed chronic insertional left Achilles tendinopathy. He related in a May 3, 2022 progress note that appellant was status post two weeks left Achilles debridement and repair. Appellant reported discomfort from swelling. Dr. Nemec diagnosed left Achilles tendinitis, and indicated that she would remain in an Achilles boot with wedges. He treated appellant on June 7, 2022 and she reported attending physical therapy twice a week and wearing a boot daily. Dr. Nemec noted mild swelling and tenderness of the medial ankle and dorsal midfoot, healing surgical incision without erythema, and decreased sensation to light touch of the medial foot and ankle. He reiterated his prior diagnosis of left Achilles tendinitis and continued physical therapy. Dr. Nemec continued to treat appellant through July 12, 2022 status post left Achilles debridement and repair. Appellant reported intermittent sharp pain throughout the posterior aspect of her ankle. Dr. Nemec noted mild swelling of the medial ankle and dorsal midfoot, and healing surgical incision without erythema. He continued to diagnose left Achilles tendinitis.

On April 27, 2022 Stephanie Batterbee, a physician assistant, treated appellant for status post left Achilles debridement and repair. She diagnosed left Achilles tendinitis and placed appellant in an Achilles boot.

By decision dated June 5, 2023, OWCP denied modification of the April 25, 2023 decision.

LEGAL PRECEDENT

A claimant 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,⁴ 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

³ *Supra* note 1.

⁴ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.⁵ 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.⁶

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.

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ The opinion of the physician must be based upon 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.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left foot condition causally related to the accepted factors of her federal employment.

Appellant submitted a series of notes and reports dated April 14 through December 9, 2022 from Dr. Nemec. Dr. Nemec diagnosed hammer toe of the fourth toe of the left foot, chronic insertional left Achilles tendinopathy, and left Achilles tendinitis. Additionally, on April 14, 2022 he performed left Achilles debridement and repair, left flexor hallucis longus tendon transfer, and left foot excision of Haglund's deformity and subsequently advised that appellant could return to work with restrictions, four hours per day. However, Dr. Nemec did not provide an opinion on causal relationship between her diagnosed conditions and resultant partial disability, and the accepted employment factors. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.⁹ This evidence, is, therefore, insufficient to establish appellant's claim.

Dr. Nemec's remaining medical evidence consisted of a Form CA-20 dated December 6, 2022. In his Form CA-20, he reiterated his diagnosis of left Achilles tendinitis and

⁵ *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).

⁶ *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).

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

⁸ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

⁹ *See J.C.*, Docket No. 21-1003 (issued September 27, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *see also C.S.*, Docket No. 21-0354 (issued June 27, 2023).

noted with a checkmark “Yes” that the diagnosed condition was caused by employment factors. However, the Board has held that an opinion on causal relationship with an affirmative check mark, without more by way of medical rationale, is insufficient to establish the claim.¹⁰ As such, this report is insufficient to establish appellant’s claim.

Appellant also submitted reports from physician assistants. These reports are of no probative value because physician assistants are not considered physicians as defined under FECA.¹¹ As such, this evidence is insufficient to establish appellant’s claim.

Lastly, appellant submitted a summary of treatment dated October 21, 2021 through October 21, 2022 from an unidentifiable healthcare provider and other illegible treatment notes dated September 30 and October 21, 2022. The Board has held that reports that are unsigned or bear an illegible signature cannot be considered probative medical evidence as the author cannot be identified as a physician.¹² Therefore, this evidence is insufficient to establish appellant’s claim.

As appellant has not submitted rationalized medical evidence establishing a left foot condition causally related to the accepted factors of federal employment, the Board finds that she has not met her 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 her burden of proof to establish a left foot condition causally related to the accepted factors of her federal employment.

¹⁰ See *J.H.*, Docket No. 23-0159 (issued August 1, 2023); *C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

¹¹ Section 8101(2) (this subsection 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 Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); see also; *K.M.*, Docket No. 22-0299 (issued September 1, 2022) (physician assistants are not considered physicians as defined under FECA); *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).

¹² *T.B.*, Docket No. 23-0499 (issued August 14, 2023); *K.K.*, Docket No. 22-0270 (issued February 14, 2023); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2024
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