

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

S.Q., Appellant	)	
	)	
and	)	<b>Docket No. 26-0213</b>
	)	<b>Issued: May 4, 2026</b>
DEPARTMENT OF THE NAVY,	)	
PORTSMOUTH NAVAL SHIPYARD,	)	
Kittery, ME, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 2, 2026 appellant filed a timely appeal from a December 1, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> 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> Appellant submitted a timely oral argument request before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, he asserted that oral argument should be granted so that he could explain how his claimed employment injury occurred and to describe the aftereffects. The Board, in exercising its discretion, denies his request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the December 1, 2025 decision appellant submitted additional evidence on appeal. 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 traumatic injury in the performance of duty on April 1, 2025, as alleged.

## **FACTUAL HISTORY**

On July 2, 2025 appellant, a 46-year-old engineering technician, filed a traumatic injury claim (Form CA-1), alleging that on April 1, 2025 he developed a severe infection from a blister on his big toe when walking while in the performance of duty. He noted that he had attempted to treat the blister himself, but it became infected. Appellant stopped work on April 1, 2025, and returned on April 2, 2025.

A July 2, 2025 e-mail contained a form report completed by E.H.'s, which indicated that an incident occurred on April 1, 2025 "walking back and forth between buildings, blister formed. Blister became infected." The right big toe was identified as the site of injury. The form also noted that the blister formed from new boots.

In a letter dated July 2, 2025, the employing establishment controverted appellant's claim, noting that he failed to provide any information regarding the alleged incident. It noted that no witness statements, investigative reports or mishap reports had been submitted.

In a July 9, 2025 development letter, OWCP informed appellant that it was unclear from the evidence as to whether he was claiming an occupational disease claim or a traumatic injury claim. It provided him with definitions for each type of claim. OWCP advised appellant of the type of factual and medical evidence needed and provided a questionnaire for his completion. It afforded him 60 days to submit the necessary evidence.

Thereafter OWCP received medical evidence.

In a June 23, 2025 final report, Tammie Hutichson, a certified family nurse practitioner, diagnosed right foot diabetic ulcer, diabetic polyneuropathy associated with type 2 diabetes mellitus, history of osteomyelitis, type II diabetes mellitus, and celiac disease. She noted that appellant presented with a large ulcer of the plantar great toe and provided examination findings. A review of a June 9, 2025 x-ray showed no focal osteomyelitis and great toe soft tissue swelling and apparent ulceration.

In a July 7, 2025 report, Dr. Elizabeth Mazzeo, a Board-certified internist, diagnosed diabetic foot wound, osteomyelitis, and history of diabetic neuropathy. She recounted that appellant had developed a blister on the great right toe in March 2025 which worsened in April.

In podiatry consult note and notes dated July 7 and 8, 2025, Dr. Thanh Nguyen, podiatrist, recounted a history of nonhealing right plantar great toe since March 2025. He also related that appellant was currently being treated for wound care. Dr. Nguyen diagnosed right great toe wound concerning for septic joint of the interphalangeal joint (IPJ). In a note of even date, he reported right great toe bone infection debridement.

In a July 7, 2025 emergency department notes, Dr. Anthony Foianini, a Board-certified emergency room physician, reported appellant was seen for foot wound with concern for osteomyelitis. Appellant stated that he had a nonhealing plantar foot wound of the great toe since March 2025. Dr. Foianini diagnosed osteomyelitis.

In July 7, 2025 emergency department triage notes by a registered nurse, observed a “red angry-looking great toe,” noting appellant had type 2 diabetes mellitus. Appellant related that he had a right foot blister for about a month, which became infected.

In July 9, 2025 progress notes, Dr. Tina Seecharan, a Board-certified internist, diagnosed osteomyelitis, diabetic foot wound, and history of diabetic neuropathy. She noted that appellant had first developed a blister on the right great toe in March, which worsened in April. Dr. Seecharan noted that it was likely appellant would require great toe amputation.

In a progress report dated July 10, 2025, Dr. Ngyuyen, diagnosed right foot diabetic osteomyelitis. On physical examination, he reported a right great toe plantar wound with infected blister and cellulitis.

In progress notes covering the period July 10 through 13, 2025, Dr. Cameron Price, a Board-certified internist, diagnosed osteomyelitis of the great toe. He noted a diabetic foot wound and history of diabetic neuropathy.

In a July 12, 2025 report, Kathryn E. Fox, a registered nurse, diagnosed osteomyelitis and type 2 diabetes mellitus with foot ulcer.

In progress notes and discharge summary dated July 14, 2025, Dr. Price summarized appellant’s medical treatment and diagnosed osteomyelitis, type 2 diabetes mellitus with foot ulcer, and type 2 diabetes mellitus with other diabetic neurologic complications.

Dr. Nguyen, in office visit notes dated July 16, 2025, diagnosed osteomyelitis, type 2 diabetes mellitus with foot ulcer, and right foot infection. He noted that appellant presented with severe right diabetic foot wound and septic IPJ right hallux status post hallux bone debridement. Appellant indicated that he would like to undergo right foot hallux amputation.

In a July 23, 2025 final report, Jessica Manzer, a registered nurse, provided physical examination findings and diagnosed right foot diabetic ulcer of the plantar great toe.

In a follow-up development letter dated August 20, 2025, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim as he had not responded to the questionnaire it had provided. It noted that he had 60 days from the July 9, 2025 letter to submit the necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

Thereafter OWCP received OWCP work restrictions dated August 27, 2025 indicating appellant could perform full-duty work with a date of onset of April 1, 2025 from Jennifer Robles, a certified family nurse practitioner. She checked the box “undetermined” under work related.

By decision dated December 1, 2025, OWCP denied appellant’s traumatic injury claim, finding that the evidence of record was insufficient to establish that the April 1, 2025 incident occurred, as alleged. It noted that he had not responded to the development questionnaire. OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

## 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 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>5</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>6</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>7</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. First, 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>8</sup>

To establish that, an injury occurred as alleged, the injury does not have to be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.<sup>9</sup> The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statements in determining whether a *prima facie* case has been established.<sup>10</sup> An employee's statements alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>11</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> *R.R.*, Docket No. 25-0535 (issued June 23, 2025); *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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>6</sup> *R.R.*, *id.*; *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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>7</sup> *R.R.*, *id.*; *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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>8</sup> *R.R.*, *id.*; *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *R.R.*, *id.*; *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

<sup>10</sup> *R.R.*, *id.*; *K.H.*, Docket No. 22-0370 (issued July 21, 2022); *Betty J. Smith*, 54 ECAB 174 (2002); *see also L.D.*, Docket No. 16-0199 (issued March 8, 2016).

<sup>11</sup> *See K.H.*, *id.*; *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

### **ANALYSIS**

The Board finds that appellant has not met his burden of proof to establish a traumatic injury while in the performance of duty on April 1, 2025, as alleged.

In his Form CA-1, appellant alleged that he developed a severe infection from a blister on his big toe caused by work-related walking on April 1, 2025. The employing establishment disputed the claim citing appellant's lack of description regarding the incident. While a July 2, 2025 e-mail described included a form report completed by E.H. regarding an alleged incident on April 1, 2025, it did not identify appellant as the employee involved in the incident.

In its July 9 and August 20, 2025 letters, OWCP asked appellant to specify if the claim was for an occupational or traumatic injury and to complete a questionnaire, providing additional information as to how the alleged incident/events occurred. Appellant failed to submit a factual statement detailing the incident purported to have resulted in or contributed to his medical condition, nor did he provide a completed questionnaire.

As noted, appellant bears the burden of submitting a factual statement describing the alleged traumatic incident.<sup>12</sup> As he did not complete the development questionnaire and failed to provide sufficiently detailed factual evidence as requested by OWCP, the Board finds that he has not met his burden of proof.

Appellant may submit new evidence or argument, together 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 traumatic injury in the performance of duty on April 1, 2025, as alleged.

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<sup>12</sup> *T.K.*, Docket No. 25-0194 (issued January 28, 2025); *D.C.*, Docket No. 18-0314 (issued September 24, 2019); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 1, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 2026  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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