

ISSUE

The issue is whether appellant has met his burden of proof to establish that the acceptance of his claim should be expanded to include the additional conditions of varus deformity of the left ankle, left peroneal tendinitis, left foot displaced fracture of fifth metatarsal bone, minimally displaced fracture of left fifth metatarsal, congenital talipes calcaneovarus, acquired short left Achilles tendon, primary osteoarthritis of the left foot and ankle, left Achilles tendon contracture, acquired heel varus of the left foot, left cavovarus foot deformity, left peroneus brevis tendon rupture, left peroneus longus tendon rupture, left fifth metatarsal base fracture, left peroneal tenosynovitis with likely rupture of the peroneus brevis tendon, and left foot pain as causally related to the accepted November 10, 2018 employment injury.

FACTUAL HISTORY

On November 13, 2018 appellant, then a 60-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on November 10, 2018 he sustained a fracture of the fifth metatarsal of his left foot while in the performance of duty. In a subsequent statement, he clarified that he sustained a left fifth metatarsal fracture and a left ankle injury on November 10, 2018 when he twisted his left foot and rolled his ankle while pushing a wheelchair with intravenous (IV) bags. Appellant received treatment in a hospital emergency department on November 10, 2018 by Dr. Tha Dun, a Board-certified family practitioner, who diagnosed a nondisplaced transverse fracture at the base of the left fifth metatarsal. He prescribed a posterior ankle splint. In a November 14, 2018 report, Dr. Joseph N. Daniel, an osteopathic physician Board-certified in orthopedic surgery, noted the November 10, 2018 employment incident in which appellant inverted his left foot and ankle. He diagnosed left foot pain, displaced fracture of the left fifth metatarsal, left peroneal tendinitis, acquired heel varus of left foot, left Achilles tendon contracture, left peroneal tenosynovitis with a possible rupture of the peroneus brevis tendon, minimally displaced fracture of the left fifth metatarsal and left cavovarus deformity. Dr. Daniel also noted that appellant had sustained an aggravation of a preexisting cavovarus foot and ankle deformity with history of left peroneal tenosynovitis. He provided progress notes through December 3, 2018, noting continued left foot and ankle pain.⁴

On December 27, 2018 Dr. Daniel performed the following surgical procedures on the left foot and ankle: open reduction with internal fixation of a fracture about the proximal diaphysis of the fifth metatarsal; percutaneous tendo-Achilles lengthening; Steindler stripping; calcaneus lateral closing wedge osteotomy; distal tibia major cancellous bone graft harvest; subtalar arthrodesis; first metatarsal dorsal closing wedge osteotomy; primary repair left peroneus brevis tendon repair; primary repair of left peroneus longus tendon rupture; left peroneus longus to brevis deep tendon transfer. He provided a January 9, 2019 progress note. Appellant remained off work. OWCP paid him wage-loss compensation on the supplemental rolls commencing March 17, 2019.

On January 15, 2019 OWCP accepted the claim for nondisplaced fracture of the left fifth metatarsal bone, initial encounter for closed fracture. By decision of even date, it denied appellant's claim for varus deformity of the left ankle, left peroneal tendinitis, left foot displaced fracture of fifth metatarsal bone, minimally displaced fracture of left fifth metatarsal, congenital

⁴ A November 27, 2018 ultrasound study of the left foot and ankle demonstrated a complete tear of the peroneus longus with a 10 centimeter gap superimposed on advanced tendinosis, and advanced tendinosis and interstitial tearing of the peroneus brevis.

talipes calcaneovarus, acquired short left Achilles tendon, primary osteoarthritis of the left foot and ankle, left Achilles tendon contracture, acquired heel varus of the left foot, left cavovarus foot deformity, left peroneus brevis tendon rupture, left peroneus longus tendon rupture, left fifth metatarsal base fracture, left peroneal tenosynovitis with likely rupture of the peroneus brevis tendon, and left foot pain. OWCP found that the medical evidence of record did not establish causal relationship between those claimed conditions and the accepted November 10, 2018 employment injury.

In a February 6, 2019 report, Dr. Daniel noted intermittent left foot pain at the end of the day, with an occasional burning sensation in the left fifth toe.

On February 26, 2019 OWCP authorized surgical treatment of the left metatarsal fracture.

In reports dated March 25 and May 13, 2019 report, Dr. Daniel noted that the subtalar arthrodesis and fifth metatarsal fracture nonunion sites had not healed completely. He prescribed a bone stimulator, custom orthotics, and physical therapy.⁵

On June 13, 2019 OWCP retroactively authorized surgical incision of the left heel bone.

In June 24 and July 9, 2019 reports, Dr. Daniel noted continued nonunion of the displaced fracture of the fifth metatarsal bone. This finding was corroborated on June 18, 2019 by Dr. Paul E. Sullivan, a podiatrist, who diagnosed a displaced fracture of the left fifth metatarsal with nonunion.

Appellant accepted a modified position on July 12, 2019.

In a July 25, 2019 report, Dr. Sullivan noted continued nonunion of the left fifth metatarsal fracture.

In an August 12, 2019 report, Dr. Daniel opined that appellant had attained maximum medical improvement (MMI).

Appellant returned to full duty on September 21, 2019.

On September 24, 2019 appellant, through counsel, requested reconsideration. He asserted that based on Dr. Daniel's reports that OWCP should expand its acceptance of the claim to include a displaced transverse fracture to the proximal diaphysis of the left fifth metatarsal and other conditions denied in OWCP's January 15, 2019 decision.

By decision dated November 22, 2019, OWCP denied modification of its January 15, 2019 decision.

⁵ Appellant participated in physical therapy treatments in July and August 2019.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁶

To establish causal relationship between a condition and the employment event or factors, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁷ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 identified by the claimant.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include varus deformity of the left ankle, left peroneal tendinitis, left foot displaced fracture of fifth metatarsal bone, minimally displaced fracture of left fifth metatarsal, congenital talipes calcaneovarus, acquired short left Achilles tendon, primary osteoarthritis of the left foot and ankle, left Achilles tendon contracture, acquired heel varus of the left foot, left cavovarus foot deformity, left peroneus brevis tendon rupture, left peroneus longus tendon rupture, left fifth metatarsal base fracture, left peroneal tenosynovitis with likely rupture of the peroneus brevis tendon, and left foot pain as causally related to the accepted November 10, 2018 employment injury.

In his September 24, 2019 request for reconsideration and on appeal, counsel contends that Dr. Daniel and Dr. Sullivan consistently diagnosed a displaced transverse fracture to the proximal diaphysis of the left fifth metatarsal, disorders of the left peroneal, Achilles, peroneus brevis, and peroneus longus tendons, and other disorders of the left foot and ankle. He asserts that the unequivocal nature of these opinions is a sufficient basis on which to expand acceptance of the claim to include these additional conditions.

Dr. Daniel noted an accurate history of injury in his November 14, 2018 report. He described the mechanism of injury as an inversion of the left foot and ankle. In periodic reports through August 12, 2019, Dr. Daniel diagnosed a displaced transverse fracture to the proximal diaphysis of the left fifth metatarsal, left peroneal tendinitis, acquired short left Achilles tendon, left Achilles tendon contracture, primary arthritis of the left foot and ankle, acquired heel varus of the left foot, left cavovarus deformity, congenital talipes calcaneovarus, left foot pain, left peroneus brevis tendon rupture, left peroneus longus tendon rupture, and left peroneal tenosynovitis. In a

⁶ See *S.L.*, Docket No. 19-0603 (issued January 28, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁷ See *S.L.*, *id.*; *S.A.*, Docket No. 18-0399 (issued October 16, 2018).

⁸ See *M.M.*, Docket No. 19-0061 (issued November 21, 2019); *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

July 25, 2019 report, Dr. Sullivan noted that he saw appellant at the request of Dr. Daniel. He noted a continued nonunion of the left fifth metatarsal fracture. However, Dr. Sullivan did mention the mechanism of injury. Neither Dr. Daniel nor Dr. Sullivan provided medical rationale explaining how, physiologically, the specific motion of inverting appellant's left foot and ankle on November 10, 2018 would cause the diagnosed conditions. A mere conclusion regarding causation without supporting medical rationale is insufficient to meet appellant's burden of proof.⁹

The Board, thus, finds that appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include varus deformity of the left ankle, left peroneal tendinitis, left foot displaced fracture of fifth metatarsal bone, minimally displaced fracture of left fifth metatarsal, congenital talipes calcaneovarus, acquired short left Achilles tendon, primary osteoarthritis of the left foot and ankle, left Achilles tendon contracture, acquired heel varus of the left foot, left cavovarus foot deformity, left peroneus brevis tendon rupture, left peroneus longus tendon rupture, left fifth metatarsal base fracture, left peroneal tenosynovitis with likely rupture of the peroneus brevis tendon, and left foot pain as causally related to the accepted November 10, 2018 employment injury.

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 that the acceptance of his claim should be expanded to include the additional conditions of varus deformity of the left ankle, left peroneal tendinitis, left foot displaced fracture of fifth metatarsal bone, minimally displaced fracture of left fifth metatarsal, congenital talipes calcaneovarus, acquired short left Achilles tendon, primary osteoarthritis of the left foot and ankle, left Achilles tendon contracture, acquired heel varus of the left foot, left cavovarus foot deformity, left peroneus brevis tendon rupture, left peroneus longus tendon rupture, left fifth metatarsal base fracture, left peroneal tenosynovitis with likely rupture of the peroneus brevis tendon, and left foot pain as causally related to the accepted November 10, 2018 employment injury.

⁹ *T.D.*, Docket No. 19-1506 (issued November 4, 2020); *see L.G.*, Docket No. 19-0142 (issued August 8, 2019).

ORDER

IT IS HEREBY ORDERED THAT the November 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 2021
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