

FACTUAL HISTORY

On May 11, 2011 appellant, then a 58-year-old passport processing supervisor, filed a traumatic injury claim alleging that on May 10, 2011 she experienced pain in her right ankle and feet when she stepped on a black binder clip and almost fell down. She explained that other employees were present when the incident occurred and noted that she filled out an accident report and immediately gave it to her supervisor. Appellant stopped work on May 13, 2011 and returned on May 17, 2011.

In a May 19, 2011 letter, the employing establishment controverted appellant's claim alleging that her condition was not caused by her employment. It noted that an attending physician's report indicated that she had experienced pain in her ankles "on and off" for a year.

In a May 18, 2011 e-mail, Dean Boyle, assistant director of the New York Passport Agency, reported that appellant had been on leave restriction since October 2006 and used any accrued annual, sick or compensation time within the pay period in which it was earned or immediately after it. He stated that employees who were in the area at the time of the alleged incident informed him that they did not witness the incident.

In a May 13, 2011 return to work slip, Dr. Daniel A. Lombardi, a Board-certified internist, stated that appellant was seen in his facility on May 13, 2011. He authorized her to return to work on May 16, 2011.

In a May 16, 2011 magnetic resonance imaging (MRI) scan report, Dr. Peter Hobeika, a Board-certified radiologist, observed grossly unremarkable interosseous membrane, anterior and posterior tibiofibular ligaments, spring ligaments and lisfranc ligaments of the left ankle. He noted an old sprain and partial tear of the deltoid ligament. Dr. Hobeika also found mild tenosynovitis of the peroneal tendons and a possible tiny tear of the distal Achilles tendon. He diagnosed tendinosis of the distal Achilles tendon with a possible tiny interstitial tear, mild tenosynovitis and old sprain/partial tears of the anterior and posterior ligaments.

In a May 19, 2011 attending physician's report, a podiatrist² with an illegible signature, stated that appellant experienced pain and swelling in both ankles and heels since March 2011. Appellant was diagnosed with old sprain, Achilles tendinosis, plantar fasciitis, synovitis and other illegible conditions. The physician checked a box marked "yes" that appellant's condition was caused or aggravated by an employment activity and explained that she complained of on and off ankle pain for the past year. Appellant was authorized to return to light duty on May 23, 2011.

On May 23, 2011 OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional medical evidence to establish that the May 10, 2011 incident occurred as alleged and that her right ankle condition resulted from the alleged incident.

² The physician's license number and address were noted, but the signature is illegible.

On May 26, 2011 appellant explained that her prior physician visits were for foot pain. On May 10, 2011 she was working and hurt her right ankle and feet. Appellant provided physical therapy notes dated May 31 to June 9, 2011. She also submitted a June 21, 2011 application for New York workers' compensation.

Appellant resubmitted the May 16, 2011 MRI scan report with the correction that the MRI scan was for her right ankle, not her left ankle.

In a May 19, 2011 prescription slip, Debbie P. Bautista, a general podiatrist, authorized physical therapy twice a week.

In a May 23, 2011 return to work slip, a Dr. Ahn examined appellant that day and noted that it was uncertain when she could return to work. A follow-up appointment was scheduled for May 26, 2011.

In a May 28, 2011 report, Dr. Indu Garg, Board-certified in physical medicine and rehabilitation, stated that appellant had been well until May 10, 2011 when she slipped at work and sustained a right ankle injury. She noted that an MRI scan revealed a tear of the Achilles tendon and swelling and tendinitis of the other cartilage. Upon examination, Dr. Garg observed antalgic gait favoring on the right leg and swelling present on the medial aspect. She also found severe tenderness at the Achilles tendon with muscle spasm of the calf muscle and gastrocnemius. Dr. Garg diagnosed right ankle sprain, Achilles tendinitis and cartilage inflammation and recommended physical therapy.

In a June 7, 2011 statement, appellant noted that in 2007 she experienced pain her left foot at work. She explained that on April 18, 2007 she was removing a pack of 100 blank books from a box when the passport box fell on her left foot.

In a June 15, 2011 excuse slip, Dr. Allen Shuman, a podiatrist, noted that he examined appellant that day for foot pain and authorized her to return to work on June 17, 2011.

In a June 16, 2011 excuse slip, Dr. Garg stated that appellant had physical therapy on that date and authorized her to remain off work until July 31, 2011 due to an ankle injury.

In an undated excuse slip, Dr. Garg stated that appellant was scheduled for physical therapy on May 23, June 2 and 4 and July 2, 2011.

In a decision dated June 30, 2011, OWCP denied appellant's traumatic injury claim. It accepted that the May 10, 2011 incident occurred as alleged but denied her claim finding insufficient medical evidence to establish that her right ankle condition was causally related to the May 10, 2011 employment incident.

On July 1, 2011 appellant requested reconsideration.³ She explained that in March 2011 her coworkers knew that she experienced pain in both feet but her physicians did not realize it until after the MRI scan. Appellant was examined by Dr. Bautista in April 2011 and was given

³ In a July 1, 2011 appeal request form, appellant also requested a review of the written record.

painkillers, which helped her right ankle but not her left ankle. On May 10, 2011 she observed that the quality control area at special desk was not neat. As appellant left the area, she stepped on a large black binder clip and almost fell down. She stated that other employees had their backs to her so they did not witness the incident. Appellant experienced foot pain but continued to work. She received medical treatment from Drs. Bautista, Goldstein and Garg who recommended that she remain off work and start physical therapy. Appellant resubmitted various medical reports.⁴

In a May 5, 2011 excuse slip, an unknown provider with an illegible signature, authorized appellant to return to light duty on May 6, 2011 with limited weight bearing due to bilateral foot pain.

In a May 19, 2011 attending physician's report, an unknown provider with an illegible signature noted pain and swelling in both of appellant's ankles and heels since March 2011. A diagnosis was noted of Achilles tendinosis, plantar fasciitis, ankle ligament sprains and other illegible diagnoses. Appellant was authorized to return to light duty on May 23, 2011.

In a May 20, 2011 prescription slip, Dr. Joel A. Sender, a Board-certified internist, treated appellant that day and excused her from work until June 3, 2011. He also indicated that she had severe asthma.

In a May 23, 2011 treatment note, Dr. Ahn noted that appellant was treated that day and authorized her to return to work on May 26, 2011.

In a May 28, 2011 prescription note, Dr. Garg indicated that appellant would be attending physical therapy on Tuesdays and Thursdays. He requested that she leave work at noon on those days for her physical therapy treatments. Appellant also provided work excuse slips from Dr. Garg for June 7, 10, 13 and 14, 2011.

In a June 9, 2011 report, Dr. Harold L. Goldstein, a Board-certified pediatrician, stated that he examined appellant for a right foot and ankle injury that she sustained on May 10, 2011 when she stepped on a binder clip at work. He noted that she had previously received treatment for foot pain and ankle swelling and related that she experienced increased pain in her right ankle after she slipped on the binder clip. Dr. Goldstein reviewed appellant's history, noting that at the time of injury she was already treating with a podiatrist for foot and ankle pain. On examination he observed mild tenderness and edema of the right ankle around the medial and lateral malleoli, mild tenderness on palpation of the Achilles tendon insertion and mild-to-moderate tenderness on end range of motion on dorsiflexion and plantar flexion. Dr. Goldstein noted that x-rays revealed no apparent fracture or dislocation and an MRI scan report demonstrated tendinosis of the distal Achilles tendon with tiny interstitial tear, mild tenosynovitis peroneal tendons and mild synovitis of the tibiotalar, calcaneocuboid and talonavicular joints.

In a July 14, 2011 note, Dr. Bautista prescribed physical therapy three times a week for three months.

⁴ Appellant resubmitted Dr. Garg's work excuse slips and May 28, 2011 report, her statement about the April 18, 2007 employment incident when she experienced left foot pain and the MRI scan reports.

In a July 20, 2011 consultation report, Dr. Sanjiv Bansal, a Board-certified orthopedic surgeon, noted appellant's complaints of right ankle pain and discomfort since May 10, 2011 when she stepped on a black binder clip at work and twisted her right ankle. Appellant complained of pain and discomfort since the incident. Dr. Bansal related that a May 16, 2011 MRI scan revealed tendinosis of the distal Achilles tendon with partial interstitial tear, plantar fasciitis with calcaneus spur, mild tenosynovitis of the peroneal tendon and mild synovitis of the tibiotalar joint. He reviewed appellant's history and noted that she underwent physical therapy. The examination revealed swelling of the anterior talofibular ligament, pain along the posterior calcaneal and Achilles tendon and mild pain along the medial aspect. Thompson's test and single heel rise test were negative. Dr. Bansal recommended an injection to the right ankle.

In an unsigned July 20, 2011 report, Dr. Bansal stated that appellant was unable to return to work because her job required standing all day. He explained that she would not be able to work for a month because her foot and ankle were still an ongoing issue that had not resolved.

In a July 21, 2011 excuse slip, Dr. Garg noted that he treated appellant that date.

By decision dated October 12, 2011, an OWCP hearing representative affirmed the June 30, 2011 decision denying appellant's claim. The medical evidence of record failed to establish that her right ankle condition was causally related to the May 10, 2011 employment incident.

By letters dated October 19 and November 7, 2011, appellant submitted a request for reconsideration. She contended that she should have received workers' compensation since May 10, 2011.

In a November 14, 2011 report, Dr. Bansal stated that appellant's right ankle Achilles tendon and sprain were a "direct cause and relationship" of the May 10, 2011. He explained that her right ankle problem was a work-related accident that she sustained when she stepped on the binder clip and twisted her ankle. Dr. Bansal reported that appellant still had difficulty along the anterior talofibular ligament and pain along the Achilles, especially on the lateral aspect. He also observed intact Achilles tendon and inflammation in that area. Dr. Bansal recommended therapy and inflammation medication.

In a November 14, 2011 excuse slip, Dr. Bansal indicated that he treated appellant that day.

On December 1, 2011 appellant filed a claim for disability compensation for the period June 9 to September 9, 2011.⁵ On December 8, 2011 OWCP advised her that she was not entitled to disability compensation since she was denied.

In handwritten December 2, 2011 and January 12, 2012 attending physician's reports, Dr. Bansal noted that on May 10, 2011 appellant sustained a work-related accident to both her ankles. He provided an illegible diagnosis and noted that she was disabled from June 9 to September 11, 2011.

⁵ She filed subsequent claims for disability for the periods May 10 to September 11, 2011.

In a decision dated February 7, 2012, OWCP denied modification of the October 12, 2011 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative and substantial evidence⁷ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.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.⁹ There are two components involved in establishing the fact of injury. First, 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.¹⁰ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.¹¹ An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.¹²

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.¹³ Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on whether there is a causal relationship between the employee’s diagnosed condition and the specified employment factors or incident.¹⁴ 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 the specific employment factors identified by the employee.¹⁵ The weight of the medical evidence is

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁸ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁹ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

¹⁰ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

¹¹ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹² *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹³ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹⁴ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁵ *D.S.*, Docket No. 09-860 (issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007).

determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹⁶

ANALYSIS

OWCP accepted that on May 10, 2011 appellant slipped on a black binder clip at work. It denied her claim finding insufficient medical evidence to establish that her right ankle condition was causally related to the accepted employment incident. The Board finds that appellant did not meet her burden of proof to establish that she sustained a right ankle injury in the performance of duty.

Appellant submitted medical reports by Dr. Bansal, who related that on May 10, 2011 she twisted her right ankle when she stepped on a black binder clip at work. Dr. Bansal observed swelling of the anterior talofibular ligament, pain along the posterior calcaneal and Achilles tendon and mild pain along the medial aspect. In a November 14, 2011 report, he opined that appellant's right ankle Achilles tendon and sprain had a "direct cause and relationship" to the May 10, 2011 employment incident. Dr. Bansal's reports, however, never reflected an accurate history of injury. Appellant's attending podiatrist noted on the form report dated May 19, 2011 that she had a history of old ankle sprain and that she had experienced pain and swelling in both ankles and heels since March 2011.

On May 26, 2011 appellant submitted a supplemental statement in which she acknowledged that her prior physician visits for foot pain. Dr. Bansal's reports do not provide any discussion of appellant's preexisting ankle condition. He explained generally that her right ankle problem was a work-related accident sustained when she stepped on the binder clip and twisted her ankle. Although Dr. Bansal concluded that appellant's right ankle condition was related to the May 10, 2011 employment incident, his opinion is not based upon full or an accurate medical history. He did not provide adequate explanation or medical rationale to support stated conclusion. The Board has found that medical opinion not based upon an accurate history and not fortified by medical rationale is of diminished probative value.¹⁷ A well-rationalized explanation is particularly needed in this case where the record reveals that appellant complained of bilateral foot and ankle pain prior to the May 10, 2011 employment incident. Without medical rationale to support his conclusion, the Board finds that Dr. Bansal's reports are insufficient to establish appellant's claim.

Appellant also submitted medical reports by Dr. Garg. Regarding appellant's history, in her May 28, 2011 report, Dr. Garg related that appellant had been well until May 10, 2011. She did not provide a history which addressed appellant's prior ankle treatment or complaints. Dr. Garg accurately described the May 10, 2011 employment incident and conducted an examination of appellant's right ankle. She observed swelling and severe tenderness at the Achilles tendon, muscle spasm of the calf muscle and antalgic gait. Dr. Garg diagnosed right ankle sprain, Achilles tendinitis and cartilage inflammation. She did not, however, adequately explore the cause of appellant's diagnosed right ankle condition. Dr. Garg described the May 10,

¹⁶ *James Mack*, 43 ECAB 321 (1991).

¹⁷ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-975 (issued February 6, 2009).

2011 incident and provided a diagnosis but did not give any opinion on the causal relation between the incident and appellant's right ankle condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. Dr. Garg's reports are insufficient to establish appellant's claim.¹⁸ Similarly, Dr. Goldstein's June 9, 2011 report does not establish causal relationship as he does not provide any opinion on the cause of appellant's condition nor explain how the May 10, 2011 event caused or aggravated her right ankle condition.

Appellant also submitted various reports and work excuse slips from unknown providers with illegible signatures. The Board has previously held, however, that reports that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.¹⁹ These reports, therefore, are insufficient to establish appellant's claim.

The work excuse slips and prescription notes by Drs. Lombardi, Bautista, Shuman, Sender, and Ahn and Dr. Hobeika's diagnostic report are also insufficient to establish appellant's claim. They contain no opinion regarding the cause of appellant's right ankle condition. They merely noted the dates that appellant received medical treatment and when she was able to return to work.

On appeal, appellant described the May 10, 2011 employment incident and related that she was unable to go to work because her right ankle was swollen and hurt. Her belief, however, is insufficient to establish that her right ankle condition was causally related to the May 10, 2011 employment incident. Causal relationship is a medical issue that can only be established by the submission of rationalized medical opinion evidence.²⁰ Because appellant has not provided such rationalized medical evidence, the Board finds that she did not meet her burden of proof to establish her claim.

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 failed to establish that her right ankle condition was causally related to the May 10, 2011 employment incident.²¹

¹⁸ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁹ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

²⁰ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-658 (issued October 22, 2009); *D.I.*, 59 ECAB 158 (2007).

²¹ The Board notes that appellant submitted additional evidence following the February 7, 2012 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2012 and October 12, 2011 merit decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 14, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board