

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

R.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Melrose Park, IL, Employer**

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**Docket No. 13-333
Issued: April 25, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 28, 2012 appellant filed a timely appeal of an August 14, 2012 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

ISSUE

The issue is whether appellant has established that she sustained an injury in the performance of duty, causally related to factors of her federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted new evidence with her appeal to the Board. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

FACTUAL HISTORY

On May 4, 2012 appellant, then a 49-year-old letter carrier, filed an occupational disease claim alleging that she first became aware of left ankle pain on March 1, 2012, but did not realize that it was related to her employment duties of delivering mail until April 15, 2012.

In support of her claim, appellant submitted a statement describing her job duties, a May 8, 2012 work status report diagnosing left ankle pain, a May 8, 2012 medical treatment slip with a diagnosis of left ankle sprain and a May 8, 2012 duty status report containing work restrictions and a diagnosis of left ankle pain. The form reports were signed by Rachel Baugues, a certified physician's assistant and Dr. Rajeev Khanna, a treating Board-certified internist.

In correspondence dated May 17, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim. It advised her as to the type of medical and factual evidence required to support her claim. Appellant was given 30 days to provide this information.

In response to the May 17, 2012 letter, appellant submitted April 1, 2012 magnetic resonance imaging (MRI) scans of both knees, a May 8, 2012 progress from Dr. Khanna and a June 8, 2012 report from Dr. Anatoly M. Rozman, an examining Board-certified physiatrist.

On May 8, 2012 Dr. Khanna reported that appellant injured her left ankle on April 18, 2012 while she was delivering mail. Appellant related feeling sharp pain in her left ankle that day. She also stated that she continues to have left ankle pain while walking. Diagnoses included left ankle pain and left ankle sprain.

In a June 8, 2012 report, Dr. Rozman noted a history including appellant twisting her ankle in 2006 when she stepped in a rabbit hole while performing her employment duties. Physical findings included a mildly swollen left ankle and bilateral knee crepitation. Dr. Rozman diagnosed left ankle pain and ruled out tendons and ligament tear.

By decision dated August 14, 2012, OWCP denied her claim as the record was devoid of any medical evidence containing a diagnosis or its relationship to her employment. It also noted that pain is considered a symptom and not a diagnosis.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the

³ 5 U.S.C. § 8101 *et seq.*

employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

OWCP regulations define the term occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift.⁶ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

If a claimant does establish an employment factor, she must submit medical evidence showing that a medical condition was caused by such a factor.⁸ The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence from a physician. 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.⁹

ANALYSIS

The medical evidence submitted by appellant is insufficient to establish that she sustained a left ankle condition due to accepted employment activities as a letter carrier. Therefore, appellant has failed to meet her burden of proof.

Appellant submitted medical records dated May 8, 2012 from Dr. Khanna, an attending Board-certified internist, who diagnosed left ankle pain and sprain. Dr. Khanna stated that appellant injured her left ankle while delivering mail on April 18, 2012. However, appellant attributed her left ankle condition to her employment duties of delivering mail and not to a single incident. It is well established that medical opinions based on an incomplete or inaccurate history are of diminished probative value.¹⁰ In addition, Dr. Khanna provided no opinion as to

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ 20 C.F.R. § 10.5(ee). See *S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Donald W. Wenzel*, 56 ECAB 390 (2005).

⁷ *D.U.*, Docket No. 10-144 (issued July 27, 2010); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Frankie A. Farinacci*, 56 ECAB 723 (2005).

⁸ *C.D.*, Docket No. 09-1881 (issued April 20, 2010); *Effie Morris*, 44 ECAB 470 (1993).

⁹ *D.S.*, Docket No. 09-860 (issued November 2, 2009); *I.J.*, 59 ECAB 408 (2008); *B.B.*, 59 ECAB 234 (2007); *Solomon Polen*, 51 ECAB 341 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *L.G.*, Docket No. 09-1692 (issued August 11, 2010); *M.W.*, 57 ECAB 710 (2006); *James R. Taylor*, 56 ECAB 537 (2005) *Douglas M. McQuaid*, 52 ECAB 382 (2001).

the causal relationship between the established work-related duties and appellant's claimed ankle condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹¹ For these reasons, the Board finds Dr. Khanna's reports insufficient to establish appellant's claim.

Similarly, Dr. Rozman's report is also insufficient to support appellant's claim. He reported that appellant injured her ankle in 2006 when she twisted it while stepping in a rabbit hole and makes no mention of her current employment duties. As noted above, a medical opinion based on an inaccurate or incomplete history is of diminished probative value.¹² Furthermore, Dr. Rozman has not provided a medical diagnosis other than diagnosing left ankle pain. The Board has held that generally pain is a symptom and not a diagnosis.¹³ Thus, Dr. Rozman's opinion is insufficient to support appellant's claim.

The remaining medical evidence of record, including reports of MRI scans which do not contain an opinion on the cause of appellant's claimed condition, are insufficient to establish appellant's claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's conditions became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹⁴ Causal relationship must be established by rationalized medical opinion evidence and she failed to submit such evidence.

OWCP advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Consequently, appellant has not met her burden of proof to establish that her claimed left ankle condition were causally related to her employment.

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 appellant failed to establish that she sustained a left ankle condition while in the performance of duty, causally related to factors of her federal employment.

¹¹ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *K.W.*, 59 ECAB 271 (2007); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

¹² *L.G.*, *supra* note 10; *M.W.*, *supra* note 10; *James R. Taylor*, *supra* note 10; *Douglas M. McQuaid*, *supra* note 10.

¹³ *A.D.*, Docket No. 09-2030 (issued May 20, 2010); *Robert Broome*, 55 ECAB 339 (2004).

¹⁴ *See D.U.*, *supra* note 7; *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, *supra* note 13; *Anna C. Leanza*, 48 ECAB 115 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 14, 2012 is affirmed.

Issued: April 25, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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