

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

---

**M.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
West Babylon, NY, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 13-62  
Issued: March 13, 2013**

*Appearances:*  
*Thomas R. Harkins, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 10, 2012 appellant, through her attorney, filed a timely appeal from a May 21, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant sustained an injury on December 15, 2010 in the performance of duty.

**FACTUAL HISTORY**

On January 5, 2011 appellant, then a 58-year-old letter carrier, filed a traumatic injury claim alleging that on December 15, 2010 she sustained torn plantar fasciitis of the left foot in

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

the performance of duty. She stopped work on January 5, 2011. By letter dated January 13, 2011, the employing establishment controverted the claim as appellant did not promptly advise management of her injury or provide medical documentation supporting causal relationship.

On January 19, 2011 OWCP requested that appellant submit additional factual and medical information, including a detailed report from her attending physician discussing the causal relationship between any diagnosed condition and the identified work incident.

In a report dated January 4, 2011, Dr. Bruce A. Zappia, a podiatrist, discussed appellant's complaints of foot pain, left more than right. He noted that her pain had worsened since December but that she "had a chronic history of arch pain." Dr. Zappia diagnosed left plantar fasciitis.

On January 6, 2011 Dr. Zappia reviewed a sonogram of the left lower extremity that revealed "moderate plantar fasciitis with a very low grade tear affecting the deep surface adjacent to the calcaneal origin" and a plantar fibroma. He noted that appellant walked extensively in her work for the employing establishment. Dr. Zappia found that she was unable to work and placed her in a walker.

In a form report dated January 13, 2011, Dr. Zappia diagnosed a left plantar fascia tear, left plantar fasciitis and a left plantar fibroma. He listed a history of injury to the left foot from "walking and being on her feet all day." Dr. Zappia checked "yes" that the condition was caused or aggravated by employment.

In a progress report dated January 20, 2011, Dr. Zappia related, "[Appellant] states that there is a chronic history of pain to her feet, the most recent in December. She has been experiencing increased pain while working. [Appellant] states that, from walking and standing all day and carrying a heavy mailbag, her foot began to hurt." He recommended a magnetic resonance imaging (MRI) scan study to rule out a stress fracture.

By decision dated February 24, 2011, OWCP denied appellant's claim finding that she did not submit sufficient factual evidence to establish the occurrence of the December 15, 2010 work incident.

On February 3, 2011 Dr. Zappia requested authorization for an MRI scan study. He noted that appellant attributed her pain to standing, walking and carrying a mailbag at work. In a February 3, 2011 duty status report, Dr. Zappia found that she was unable to work. He diagnosed a tear of the plantar fascia and fasciitis and noted that appellant related her injury to work.

In a report dated March 10, 2011, Dr. Zappia noted that appellant "relates that she was initially injured and began experiencing pain in December while working." He found that a February 11, 2011 MRI scan study showed "mild to moderate plantar fasciitis with a low-grade partial tear of the lateral central band proximally" and also revealed intensity thickening at the central band "likely representing scarring from chronic injury of the plantar fascia." Dr. Zappia recommended orthotics and physical therapy. He indicated that appellant was "still out of work." In progress reports dated April 28 to May 19, 2011, Dr. Zappia listed findings on

examination and reviewed her orthotics fitting. On May 19, 2011 he released appellant to return to work.

In progress reports dated June 14 through August 18, 2011, Dr. Zappia provided examination findings, noted that appellant's pain began while working and discussed orthotics.

In a letter dated June 25, 2011, appellant described her injury as occurring on December 15, 2010 when she felt a pull on the bottom of her left foot stepping from her vehicle onto the street. She continued to work with pain and a limp. Appellant told her supervisor about her injury. She initially believed that she had pulled a muscle that would soon improve.

On February 14, 2012 appellant, through her attorney, requested reconsideration. He asserted that she submitted a factual statement establishing the occurrence of the December 15, 2010 incident. Counsel also contended that Dr. Zappia's reports supported a medical condition as a result of the employment incident.

By decision dated May 21, 2012, OWCP affirmed its February 24, 2011 decision as modified to reflect that the December 15, 2010 work incident occurred at the time, place and in the manner alleged. It found, however, that the medical evidence did not establish that appellant sustained a medical condition causally related to the December 15, 2010 employment incident.

On appeal appellant's attorney referred to the arguments provided in his request for reconsideration and asserted that appellant had met her burden of proof to establish an injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> 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 employment injury.<sup>3</sup> 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.<sup>4</sup>

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.<sup>5</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition

---

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

<sup>3</sup> *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

<sup>4</sup> *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>5</sup> *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

for which compensation is claimed.<sup>6</sup> An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.<sup>7</sup>

### ANALYSIS

Appellant alleged that she sustained an injury to her left foot on December 15, 2010 when she stepped from her vehicle onto the street. OWCP accepted that the incident occurred at the time, place and in the manner alleged. The issue is whether the medical evidence establishes that appellant sustained an injury as a result of this incident. The Board finds that she has not established that the December 15, 2010 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by probative medical evidence.<sup>8</sup>

On January 31, 2011 Dr. Zappia noted that appellant complained of bilateral foot pain, worse on the left side. He stated that she had a history of chronic pain in her arches that had worsened since December. Dr. Zappia diagnosed left plantar fasciitis. He did not, however, address the cause of the left plantar fasciitis or the December 15, 2010 incident. Thus Dr. Zappia's report is of little probative value on the issue of causal relationship.<sup>9</sup>

On January 6, 2011 Dr. Zappia interpreted a left lower extremity sonogram as showing moderate plantar fasciitis, a tear next to the calcaneal origin and a plantar fibroma. He noted that appellant walked extensively on her route for the employing establishment. Dr. Zappia opined that she was disabled from employment. While he noted that she walked at work, he did not specifically address the incident accepted in this case as the cause of the findings on the sonogram. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>10</sup>

In a form report dated January 13, 2011, Dr. Zappia diagnosed a left plantar fascia tear, left plantar fasciitis and a left plantar fibroma. He listed the history of injury as appellant injuring her left foot due to walking and standing on her feet. Dr. Zappia checked "yes" that the condition was caused or aggravated by employment. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.<sup>11</sup>

---

<sup>6</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>7</sup> *Id.*

<sup>8</sup> *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

<sup>9</sup> *Conard Hightower*, 54 ECAB 796 (2003).

<sup>10</sup> *See S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, *supra* note 9.

<sup>11</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

On January 20, 2011 Dr. Zappia again discussed appellant's history of chronic feet pain beginning most recently in December. He noted that she related that her foot began to hurt "from walking and standing all day and carrying a heavy mail bag." In a report dated February 3, 2011, Dr. Zappia diagnosed a plantar fascia tear and fasciitis and indicated that appellant believed that her condition was work related. While he indicated that appellant attributed her condition to employment, he did not provide an opinion addressing causation in relation to the December 15, 2010 incident. A physician's report is of little probative value when it is based on a claimant's belief rather than the doctor's independent judgment.<sup>12</sup>

On March 10, 2011 Dr. Zappia interpreted an MRI scan study as showing plantar fasciitis and a low grade partial tear. He indicated that appellant maintained that she was first injured in December at work. Dr. Zappia found she was unable to work. He further submitted progress reports dated April 28 to August 18, 2011. Dr. Zappia, did not, however, address causation and thus his reports are of little probative value. A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.<sup>13</sup>

On appeal appellant's attorney asserts that Dr. Zappia's opinion is sufficient to establish that she sustained a medical condition due to the accepted employment incident. As noted, however, he did not address causation in his reports with regard to the accepted traumatic incident of December 15, 2010; rather, he addressed general occupational factor such as walking or standing.<sup>14</sup> An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between her claimed condition and her employment.<sup>15</sup> She must submit a physician's report in which the physician reviews those factors of employment identified by her as causing her condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.<sup>16</sup> Appellant failed to submit such evidence and therefore failed to discharge 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 and 20 C.F.R. §§ 10.605 through 10.607. Additionally, if she believes that factors of employment occurring over the course of more than one single workday or shift caused a condition, she may file an occupational disease claim.

---

<sup>12</sup> *Earl David Seale*, 49 ECAB 152 (1997).

<sup>13</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>14</sup> A traumatic injury is defined as a "condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift." 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q).

<sup>15</sup> *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

<sup>16</sup> *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).

**CONCLUSION**

The Board finds that appellant has not established that she sustained an injury on December 15, 2010 in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 21, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 2013  
Washington, DC

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

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

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