

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

K.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bellmawr, NJ, Employer**

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**Docket No. 14-1258
Issued: October 9, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 7, 2014 appellant, through her attorney, filed a timely appeal from a January 29, 2014 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.

ISSUE

The issue is whether appellant established that she sustained plantar fasciitis causally related to her accepted November 28, 2011 right heel injury.

FACTUAL HISTORY

On November 28, 2011 appellant, a 36-year-old letter carrier, filed a claim for benefits, alleging that she injured her right heel when she stepped into a hole. Hospital records dated

¹ 5 U.S.C. § 8101 *et seq.*

November 28, 2011 reflect that she was evaluated for a right foot injury and was released with a diagnosis of heel spur.

Appellant was seen by Dr. Joseph Daniel, an osteopathic physician Board-certified in foot and ankle surgery, on December 2, 2011. Dr. Daniel noted that on physical examination she was tender along the plantar aspect of the right heel and that x-ray of the right foot showed evidence of an enthesophyte at the origin of the plantar fasciitis. He diagnosed contusion of the right heel.

In a report dated December 14, 2011, Dr. James Cancilleri, a specialist in podiatry, stated that x-rays of appellant's right foot showed no evidence of fracture or dislocation and were otherwise unremarkable. He diagnosed a stress fracture with contusion of the right foot and scheduled appellant for a magnetic resonance imaging (MRI) scan.

In a February 24, 2012 report, Dr. Cancilleri reviewed the results of several diagnostic tests. He stated that radiographs taken on December 2, 2011 showed no fractures, normal alignment of the foot anatomy, with evidence of an enthesophyte at the origin of plantar fasciitis. Dr. Cancilleri advised that December 14, 2011 x-rays of the lateral and axial view of the right heel demonstrated unremarkable bone stock for appellant's age and sex, with no evidence of fracture or dislocation. A December 30, 2011 MRI scan showed a heel spur with minimal change plantar fasciitis; there was no evidence of a stress fracture or post-traumatic change. Dr. Cancilleri stated that appellant not only sustained a work-related injury to the affected heel but also sustained an acute incident to the plantar fasciitis in the right leg, despite negative osseous findings. He noted that, while the plantar fasciitis can be injured acutely or chronically, she had sustained an acute event with triggering of an acute plantar fasciitis event. Dr. Cancilleri opined that there was a contusion and that appellant would benefit from the use of appropriate shoes, rest and functional foot orthosis.

By decision dated March 16, 2012, OWCP denied the claim, finding that appellant failed to establish fact of injury.

By letter dated April 3, 2012, appellant's attorney requested an oral hearing, which was held on July 12, 2012. At the hearing, appellant testified that, when she tripped and fell in the hole, her foot became stuck. She tried to catch her balance came down hard on her right foot.

By decision dated September 24, 2012, an OWCP hearing representative set aside the March 16, 2012 decision. He found that appellant sustained the November 28, 2011 incident in the time, place and manner alleged and had provided sufficiently rationalized medical evidence to establishing that the incident caused a right heel contusion. The hearing representative found that the medical evidence of record was not sufficient to accept plantar fasciitis, as an accepted condition. He found that Dr. Cancilleri did not provide a reasoned medical explanation of how the plantar fasciitis condition was causally related to her November 28, 2011 employment injury. The hearing representative directed that appellant be referred to a second opinion examiner to

determine whether her plantar fasciitis condition was causally related to her November 28, 2011 work injury.²

In a progress report dated October 22, 2012, Dr. Cancilleri diagnosed a plantar fasciitis. He explained that physical examination of appellant revealed mild tenderness on palpation at the plantar medial aspect of the right heel at the area of the insertion of the plantar fasciitis. Dr. Cancilleri advised that she should continue with use of a stable running shoe and orthotics, but no follow up was necessary as she had reached maximum medical improvement.

Appellant submitted a December 4, 2012 Form CA-7 requesting compensation for wage loss for January 13 to March 12, 2012.

By decision dated December 13, 2012, OWCP denied appellant's claim for wage loss for January 13 to March 12, 2012.

By letter dated December 18, 2012, appellant's attorney requested an oral hearing, which was held on March 26, 2013.

In a report dated March 29, 2013, Dr. Cancilleri stated that appellant sustained traumatic plantar fasciitis with contusion of her right heel area. He asserted that the plantar fasciitis tore and the heel was bruised as she twisted her foot. Dr. Cancilleri opined that as a direct result of the November 28, 2011 injury appellant was totally disabled from her job from November 28, 2011 to October 22, 2012.

By decision dated June 12, 2013, the hearing representative vacated the December 13, 2012 decision, finding that the case should be referred to a second opinion physician.

OWCP referred appellant to Dr. Zohar Stark, Board-certified in orthopedic surgeon. In a report dated July 11, 2013, Dr. Stark set forth findings on examination and reviewed the medical history and statement of accepted facts. He concluded that appellant did not sustain a right plantar fasciitis condition as a consequence of the November 28, 2011 work injury. On examination, appellant was able to walk with a normal reciprocating heel/toe gait. Dr. Stark advised that she was able to walk in calcaneus and equinus gaits but complained of pain in her right heel. His examination of appellant's right ankle and right hind foot revealed no swelling or local tenderness on palpation over the ankle or foot. Based on Dr. Stark's examination, she had not developed plantar fasciitis in her right foot as a result of the accepted November 28, 2011 employment trauma. He advised that there were no objective findings to substantiate the diagnosis and he determined that appellant had recovered from the November 28, 2011 work injury. Dr. Stark concluded that she could perform her regular, preinjury work as a postal worker.

By decision dated July 24, 2013, OWCP denied claim for benefits, finding that appellant did not sustain right plantar fasciitis causally related to her accepted November 28, 2011

² The hearing representative further found that the record was devoid of rationalized medical opinion evidence explaining how and why appellant was ever temporarily and totally disabled as a result of her November 28, 2011 workplace injury.

employment injury. It found that Dr. Stark's referral opinion represented the weight of the medical evidence.

By letter dated July 29, 2013, appellant's attorney requested an oral hearing, which was held on November 15, 2013.

By decision dated January 29, 2014, an OWCP hearing representative affirmed the July 24, 2013 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing that 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 timely filed within the applicable time limitation period of FECA, that an injury was sustained 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.⁴ 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.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "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, place and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁸

An award of compensation may not be based on surmise, conjecture or speculation. Neither, the fact that appellant's condition became apparent during a period of employment nor the belief that his or her condition was caused, precipitated or aggravated by his or her employment is sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

³ *Supra* note 1.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.* For a definition of the term "injury" *see* 20 C.F.R. § 10.5(e).

⁸ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Id.*

Section 8123(a) provides that if there is a disagreement between the physician making the examination for the United States and the physician of the employee the Secretary shall appoint a third physician who shall make an examination.¹⁰ It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.¹¹

ANALYSIS

The Board finds that there is a conflict in medical opinion between Dr. Cancilleri and Dr. Stark concerning whether appellant sustained a plantar fasciitis condition causally related to her accepted November 28, 2011 right heel injury. In his October 22, 2012 report, Dr. Cancilleri explained that he diagnosed her plantar fasciitis based upon physical examination as she had tenderness on palpation at the plantar medial aspect of the right heel at the area of the insertion of the plantar fasciitis. He submitted a March 29, 2013 report, in which he stated that appellant suffered from traumatic plantar fasciitis with contusion of her right heel area. Dr. Cancilleri explained that the plantar fasciitis tore and the heel were bruised as she twisted her foot during the November 28, 2011 work incident. OWCP subsequently referred appellant for a second opinion examination with Dr. Stark. In his July 11, 2013 report, Dr. Stark opined that he had reviewed the prior medical reports and record and examined her and determined that she did not sustain a right plantar fasciitis condition causally related to the November 28, 2011 work injury. He opined that there were no objective findings to support diagnosis of plantar fasciitis in appellant's right foot, causally related to the November 28, 2011 work injury, from which she had recovered. This created a conflict in the medical evidence.

The Board therefore finds that, in its July 24, 2013 decision, OWCP erred in failing to find that a conflict existed in the medical evidence. Accordingly, the Board will set aside the January 29, 2013 decision of the hearing representative and remands for referral of appellant, the case record and a statement of accepted facts¹² to an impartial medical specialist to resolve the conflict in medical evidence regarding whether she sustained a plantar fasciitis condition causally related to her accepted November 28, 2011 right heel injury.

After such further development of the record as it deems necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision. The case is remanded for further development of the medical evidence.

¹⁰ *Regina T. Pellecchia*, 53 ECAB 155 (2001).

¹¹ *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

¹² Appellant's attorney contends that the statement of accepted facts is inadequate because appellant testified at the hearing that, when she tripped and fell in a hole, her foot got stuck; when she tried to catch her balance, her foot came out and she came down hard on her right foot. He argues that the mechanism of injury should be described accurately so that any physician who evaluates the matter should have a full understanding of the work injury.

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further action consistent with this decision of the Board.¹³

Issued: October 9, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

¹³ See *G.B.*, Docket No. 13-1260 (issued December 2, 2013); *J.V.*, Docket No. 12-90 (issued July 2, 2012).