

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

---

**W.P., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Indianapolis, IN, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 14-1076  
Issued: September 18, 2014**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 8, 2014 appellant, through counsel, filed a timely appeal from a March 12, 2014 merit decision of an Office of Workers' Compensation Programs' (OWCP) hearing representative denying her occupational disease 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 met her burden of proof to establish that she sustained an occupational disease in the performance of duty.

**FACTUAL HISTORY**

On March 23, 2013 appellant, then a 47-year-old letter carrier, filed an occupational disease claim alleging that she developed a right shin strain and anterior compartment syndrome

---

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

in the performance of duty. She stated that the pain began two hours into her route and intensified as she worked. Appellant first became aware of her condition and its relation to her employment on March 19, 2013. She stopped work on March 20, 2013.

In a March 19, 2013 disability status report, Dr. Donald B. Baird, an osteopath, placed appellant on a no walking restriction and referred her to an orthopedic surgeon. In a separate March 19, 2013 report, he diagnosed anterior compartment syndrome. Dr. Baird noted that appellant had right shin pain with no prior episodes of similar symptoms.

In a March 20, 2013 statement, Alice Walker, a customer service supervisor, noted that appellant informed her that she injured the top part of her ankle. She stated that appellant related that her pain began as she was delivering mail. Appellant did not know what was causing the pain.

In a March 27, 2013 statement, appellant explained that on March 19, 2013 she began experiencing pain two hours into her mail delivery route. She continued on her route because she thought the pain was just a cramp. Appellant explained that she did not fall or twist her ankle, but walking became more difficult as she continued her shift.

In a March 28, 2013 letter, OWCP advised appellant that the evidence received was insufficient to support her claim. It advised that she needed to list the specific employment-related activities that contributed to her condition and to submit a physician's rationalized opinion addressing how work factors caused or aggravated her claimed condition.

In response, appellant submitted an April 1, 2013 physical therapy report. In an undated statement, she reiterated that she began experiencing pain two hours into her shift and that she did not fall or twist her ankle. Appellant detailed the conditions that she believed led to her condition. She cited the harsh terrain of her route, the heavy mail volume in her saddle bag, frequently walking up stairs and various hazardous conditions found in customers' yards. Appellant also noted that she did not experience any pain prior to the start of her shift that day.

In an April 10, 2013 Family Medical Leave Act (FMLA) medical certification report, Dr. Francis Bean, a podiatrist, diagnosed anterior tibial tendinitis and synovitis. Dr. Bean advised that appellant would be incapacitated for approximately eight weeks. He also advised that she was unable to lift, bend, squat, climb or drive. In a May 1, 2013 disability certificate, Dr. Bean advised that appellant was unable to work.

By decision dated June 6, 2013, OWCP denied appellant's claim. It found that the medical evidence failed to establish her right shin condition was causally related to work-related events.

Appellant filed a request for review of the written record on June 14, 2013 and provided new evidence. In physical therapy reports dated April 1 to May 7, 2013, cosigned by Dr. Bean, the physician diagnosed anterior tibial tendinitis and synovitis. The reports indicated that appellant was progressing and the podiatrist recommended additional therapy.

In an April 10, 2013 report, Dr. Bean diagnosed anterior tibial tendinitis and synovitis of the right leg. He advised that x-rays were negative for fracture and dislocation. Dr. Bean also

noted that appellant began experiencing pain while walking her postal route. He advised that she exhibited severe pain in the right anterior lower leg eight centimeters proximal to the central ankle on palpation and forced dorsiflexion. Dr. Bean further stated that appellant had pitting edema at the anterior medial right ankle. Appellant was advised to decrease ambulation, use a boot walker and crutches, apply moist heat and perform stretches. In handwritten treatment notes, Dr. Bean noted that a magnetic resonance imaging (MRI) scan revealed minimal tendinitis of the anterior tibial tendon without evidence of tendon tear. He also noted that appellant was treated with cortisone injections. Dr. Bean also provided treatment notes dated April 10 to May 8, 2013.

In a March 21, 2013 report, Dr. Christopher Bales, a Board-certified orthopedic surgeon, reported findings and diagnosed distal tibia pain. He noted that appellant worked as a mail carrier who walked for extended periods. Appellant's pain started on March 19, 2013 while she was walking her mail route. Dr. Bales advised that she was experiencing constant sharp pain for extended periods that worsened with ambulation. He also noted that appellant complained that the pain kept her awake at night and that moving her ankle sent sharp pain to her mid dorsal foot.

In a July 15, 2013 report, Dr. Mihir Patel, a Board-certified orthopedic surgeon and an associate of Dr. Bales, diagnosed anterior tibial tendinitis. He acknowledged that the pain occurred during appellant's mail route and that she had not experienced any pain prior to beginning her mail route. Dr. Patel discussed the possibility of surgery to treat appellant. In an August 5, 2013 report, he advised that an MRI scan revealed degenerative joint disease across the talonavicular joint. In an August 16, 2013 surgical report, Dr. Patel noted performing a right brostrom procedure, right repair with tenosynovectomy of the tibialis anterior tendon and a fluoroscopy.

On March 12, 2014 a hearing representative affirmed the June 6, 2013 decision of OWCP. He found that the medical evidence of record was not sufficient to establish causal relationship.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden to establish 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, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.<sup>2</sup> 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.<sup>3</sup>

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged

---

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>4</sup>

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.<sup>5</sup> The weight of medical evidence is 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.<sup>6</sup>

### ANALYSIS

Appellant claimed that she experienced right shin pain on March 19, 2013 while delivering mail on foot. There is no dispute that she walked as part of her job and OWCP accepted these work factors. The Board finds, however, that the medical evidence is insufficient to establish that her right foot condition was causally related to the accepted work activities as a letter carrier.

In his July 15, 2013 report, Dr. Patel diagnosed anterior tibial tendinitis and degenerative joint disease. He advised that the pain occurred during appellant's mail route and that she had not experienced any pain prior to the start of her shift. The Board has held that the mere fact that a condition manifests itself or is worsened during a period of employment does not raise an inference of causal relationship between the two.<sup>7</sup> The Board has also held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.<sup>8</sup> Dr. Patel did not provide sufficient reasoning to explain how appellant's walking at work caused or contributed to her diagnosed right foot condition. As a result, his report is insufficient to discharge her burden of proof.

In his March 21, 2013 report, Dr. Bales diagnosed distal tibia pain. He noted that appellant worked as a mail carrier who walked for extended periods of time. Dr. Bales also indicated that her pain began on March 19, 2013 while she was on her mail route. He is merely relating the history as stated by appellant. To the extent that this represents Dr. Bales' opinion

---

<sup>4</sup> *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>5</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 3.

<sup>6</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>7</sup> *Patricia Bolleter*, 40 ECAB 373 (1988).

<sup>8</sup> *Thomas D. Petrylak*, 39 ECAB 276 (1987).

on causal relationship, it is insufficient to establish appellant's claim. He did not provide any medical reasoning to explain how walking on the job caused or aggravated the diagnosed medical condition.

In his April 10, 2013 report, Dr. Bean diagnosed anterior tibial tendinitis and synovitis of the right leg. He stated that appellant initially began experiencing pain as she walked her postal route. However, his report is insufficient as he failed to explain how her federal work duties caused or aggravated her diagnosed condition. In other reports, Dr. Bean also failed to state a clear opinion on causal relationship.

In his March 19, 2013 report, Dr. Baird diagnosed presumptive anterior compartment syndrome and sprain/strain of the right shin. He failed to state a medical opinion as to how appellant's federal work duties caused her diagnosed condition. The Board has held that 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.<sup>9</sup>

Appellant also submitted physical therapy records. However, records from a physical therapist do not constitute competent medical opinion in support of causal relation. A physical therapist is not a "physician" as defined under FECA.<sup>10</sup> Thus, records from physical therapists are insufficient to establish the claim.<sup>11</sup>

The Board finds that appellant has not submitted sufficient medical evidence to establish her claim. As noted, causal relationship is a medical question that must be established by probative medical opinion from a physician.<sup>12</sup> The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated her condition.<sup>13</sup> Because appellant has not provided such medical opinion evidence in this case, she has failed to meet her burden of proof.

Appellant may submit new evidence or argument as part of a formal 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.<sup>14</sup>

---

<sup>9</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>10</sup> *A.C.*, Docket No. 08-1453 (issued November 18, 2008). Under FECA, a "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2).

<sup>11</sup> *Allen C. Hundley*, 53 ECAB 551 (2002); *Lyle E. Dayberry*, 9 ECAB 369 (1998).

<sup>12</sup> *See supra* note 5.

<sup>13</sup> *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).

<sup>14</sup> Appellant submitted new evidence after issuance of the March 12, 2014 decision. However, the Board lacks jurisdiction to review evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

**CONCLUSION**

The Board finds that appellant did not establish that she sustained an occupational disease caused by work-related events.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 12, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 2014  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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