

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

S.G., Appellant

and

**U.S. POSTAL SERVICE, SOUTH ARLINGTON
STATION, Akron, OH, Employer**

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**Docket No. 15-1540
Issued: January 15, 2016**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 9, 2015 appellant, through counsel, filed a timely appeal of a May 13, 2015 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 met her burden of proof to establish that her left foot fractures were caused by her employment duties on June 29, 2013.

FACTUAL HISTORY

On July 6, 2013 appellant, then a 40-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained left foot fractures due to walking her mail route.

¹ 5 U.S.C. § 8101 *et seq.*

She alleged that there was no external factor, such as a trip or a fall, except for the walking required for her route as a carrier.

Appellant was diagnosed with second and third metatarsal fractures and released to work with restrictions in a July 5, 2013 Summa Health System return to work form.

On July 17, 2013 OWCP received an undated statement of appellant. In her statement appellant noted that her foot began to hurt and swell around 3:00 p.m. on June 29, 2013.

OWCP received additional medical reports on July 18, 2013 as set forth below.

A July 5, 2013 x-ray interpretation revealed left foot second and third metatarsal fractures.

A Summa Health System report dated July 5, 2013 and signed by Dr. Michael V. Marquard, an examining treating Board-certified emergency physician, and Dr. Robert Faulkner, an examining Board-certified emergency physician, provided a history of injury, objective test results, and physical examination findings. Under history of illness, the report noted that appellant had complaints of left foot pain for the past six days and that she walks 11 miles per day in her job. Diagnoses included left foot second and third metatarsal fractures.

Dr. Caroline L. Wilson, an examining Board-certified emergency physician, reported on July 10, 2013 that appellant had been evaluated in the emergency room on July 5, 2013 and diagnosed with second and third metatarsal left foot fractures. She noted no specific injury, but that appellant had bone spur surgery on November 9, 2012 and since June 3, 2013 had been walking approximately 10 miles per day. Dr. Wilson reported that appellant's pain began on July 1, 2013 and became unbearable on July 5, 2013, which was the date of evaluation.

In a July 16, 2013 report, Dr. W. Joseph Schoepner, a treating podiatrist, diagnosed left foot broken bones. He noted June 29, 2013 as the date of onset of pain while appellant was delivering mail. Appellant continued working until July 5, 2013 when the pain became overwhelming and she went to the emergency room where she was diagnosed with left foot second and third metatarsal fractures.

Dr. Wilson, in a July 17, 2013 report, noted that appellant was seen for a follow-up visit. She noted that appellant walks approximately 11 miles per day and the date of injury is early July 2013. Dr. Wilson provided the history of the injury and physical examination findings. Diagnoses included left foot second and third metatarsal fractures. In a July 17, 2013 physician's report of work ability form, Dr. Wilson released appellant to work with restrictions. She noted that appellant was unable to perform her usual job.

A July 18, 2013 form report from Summa physicians noted that appellant was seen that day and that she remained totally disabled for work. The report noted a diagnosis of metatarsal fracture.

Dr. Eric T. Miller, a treating Board-certified orthopedic surgeon, in a July 18, 2013 report, diagnosed left foot second and third metatarsal fractures based on review of a July 5, 2013 x-ray interpretation. The injury date was listed as July 5, 2013. Dr. Miller described the

injury as occurring during the week of July 4, 2013 when appellant began to have increasing pain while working as a mail carrier. Appellant denied that she sustained any specific trauma to her left foot. A physical examination revealed moderate left foot swelling about the forefoot region and tenderness in the second and third metatarsal region.

On July 29, 2013 OWCP received an Ohio state workers' compensation claim form injury report from Dr. Faulkner. Dr. Faulkner noted an injury date of June 29, 2013 at 3:00 p.m. and the last workday as July 5, 2013. The description of injury revealed that appellant was walking and delivering mail when she felt her foot swell up and on July 5, 2013 she had trouble walking. Dr. Faulkner diagnosed left foot second and third metatarsals and noted "unknown" as to whether the injury was employment related.

By letter dated August 15, 2013, OWCP noted the evidence that it had received and informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised as to the medical and factual evidence required to support her claim and was afforded 30 days to provide this information.

On August 26, 2013 OWCP received an undated statement from appellant clarifying that the traumatic injury occurred on June 29, 2013 not July 6, 2013 as she was not at work on July 6, 2013. Appellant wrote that she had foot surgery on November 9, 2012, returned to work on January 28, 2013, was laid off as a transitional employee on April 12, 2013, and then rehired as a city carrier assistant on June 1, 2013. While walking and delivering mail on June 29, 2013 she noticed at about 3:00 p.m. that her foot was hurting and it began to swell. Appellant informed her supervisor on July 1, 2013 that her left foot hurt and was swollen. However, it was not until July 5, 2013 that she could barely walk due to the pain and that she went to the emergency room where she was informed that she had second and third metatarsal fractures in her left foot.

In an August 22, 2013 report, Dr. Miller noted that appellant had been diagnosed with left foot second and third metatarsal fractures in a July 5, 2013 x-ray interpretation. The date of injury was noted as July 5, 2013. Appellant reported that her pain had significantly improved.

By decision dated September 27, 2013, OWCP denied appellant's claim as it found the medical evidence insufficient to establish a causal relationship between the diagnosed second and third metatarsals stress fractures and the June 29, 2013 employment incident.

In a September 30, 2013 letter, counsel requested a telephonic hearing before an OWCP hearing representative, which was held on March 3, 2014.

Dr. Miller, in an October 3, 2013 report, noted that appellant was seen for a follow-up for her left foot second and third metatarsal fractures. He reported the injury date as July 5, 2013. Under assessment, Dr. Miller noted closed metatarsal bone fracture.

In a March 11, 2014 report, Dr. Miller wrote that he first saw appellant on July 18, 2013 for her left foot second and third metatarsal fractures. He noted the history of injury as related by appellant. Dr. Miller wrote that appellant's increasing pain symptoms were consistent with a stress fracture due to significant walking. However, he was unable to opine whether the

condition was attributable to the June 29, 2013 incident as he did not see appellant until July 18, 2013.

By decision dated April 4, 2014, an OWCP hearing representative affirmed the September 27, 2013 denial of appellant's claim.

In a letter dated March 9, 2015, counsel requested reconsideration and submitted a November 26, 2014 report by Dr. Wilson in support of the request.

In a November 26, 2014 report, Dr. Wilson reported seeing appellant on July 10, 2013 for left foot pain which began approximately on June 29, 2013. A review of July 5, 2013 x-ray interpretations revealed second and third metatarsal fractures with displacement. Dr. Wilson noted that appellant had surgery in November 2012 and subsequently returned to work. She noted that appellant began delivering mail on June 1, 2013 which entailed walking 10 to 11 miles per day. Dr. Wilson attributed appellant's fractures to the rapid transition from sedentary work to full-duty work and the considerable walking required in her job.

By decision dated May 13, 2015, OWCP denied modification, after merit review.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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.³ 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.⁴

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury 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.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.⁶ First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.⁷ Second, the

² *Supra* note 1.

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

⁴ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

⁷ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁹ 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 compensable employment factors.¹⁰ 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.¹¹

ANALYSIS

Appellant alleged that she sustained left foot fractures as the result of walking while delivering mail on June 29, 2013. OWCP found the evidence sufficient to establish that the incident occurred as alleged, but found that the medical evidence of record was insufficient to establish the condition was causally related to the June 29, 2013 employment incident. The issue is whether appellant has established that she sustained a left foot condition causally related to walking her mail route on June 29, 2013. The Board finds that she has failed to meet her burden of proof.

Dr. Wilson diagnosed left foot second and third metatarsal fractures in her reports. The Board finds, however, that she failed to adequately address the issue of causal relationship. Dr. Wilson did not explain, with medical rationale, the mechanism by which walking her mail route on June 29, 2013 caused or aggravated appellant's left foot second and third metatarsal fractures.

The only report addressing the cause of appellant's condition was in a November 26, 2014 report in which Dr. Wilson attributed the fractures to the rapid transition from sedentary to full-duty work and the considerable walking required in the position. The Board finds, however, that Dr. Wilson did not explain why transitioning from a sedentary position to a position which required walking would cause foot fractures. She did not provide medical rationale to explain how the left foot fractures had been caused or aggravated by walking and delivering mail on June 29, 2013. As such it is of little probative value.¹²

⁸ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3.

⁹ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹⁰ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹² *S.S.* Docket No. 07-579 (issued January 14, 2008); *Richard A. Neidert*, 57 ECAB 474 (2006); *Willa M. Frazier*, 55 ECAB 379 (2004).

In reports dated July 10 and 17, 2013, Dr. Wilson noted that appellant was seen on July 5, 2013 for left foot second and third metatarsal fractures. She noted the history of the injury and that appellant walked approximately 10 miles per day. Dr. Wilson diagnosed left foot second and third metatarsal fractures. In these reports she did not offer any opinion as to the cause of appellant's left foot fractures. As Dr. Wilson failed to offer an opinion on the cause of appellant's condition, these reports are insufficient to establish causal relationship.¹³ These reports are also deficient as they are based on an inaccurate history of injury as Dr. Wilson noted an injury date of early July 2013.¹⁴

The reports from Dr. Miller are also insufficient to support appellant's claim. In reports dated July 18, August 22, and October 3, 2013, Dr. Miller noted an injury date of July 5, 2013 and diagnosed left foot second and third metatarsal fractures. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹⁵ In addition, the Board has held that medical conclusions based on an inaccurate or incomplete factual history are of diminished probative value.¹⁶ Dr. Miller's March 11, 2014 report is also insufficient to support appellant's claim as the physician noted that he was unable to conclude whether walking on June 29, 2013 was the cause of the diagnosed condition.

The reports of Drs. Marquard, Faulkner, and Schoeppner are insufficient to meet appellant's burden of proof as none of these physicians provided an opinion on the cause of her condition, or they found the cause was unknown. As such, their opinions are insufficient to establish causal relationship.¹⁷ Likewise, the x-ray interpretation and work release reports are of limited probative value as they do not address whether the July 29, 2013 work incident caused any diagnosed condition.

The record before the Board is without rationalized medical evidence establishing that appellant's left foot fractures were causally related to the accepted June 29, 2013 employment incident. OWCP advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment, and the physician's opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹⁸ An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.¹⁹

¹³ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁴ *M.W.*, 57 ECAB 710 (2006); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

¹⁵ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, *supra* note 13; *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁶ *Supra* note 14.

¹⁷ *Supra* note 13.

¹⁸ *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁹ *S.S.*, 59 ECAB 315 (2008); *J.M.*, 58 ECAB 303 (2007); *Donald W. Long*, 41 ECAB 142 (1989).

In addition, to the extent that appellant's statement and the medical evidence indicate that her foot fractures were causally related to daily employment activities, as an alternative, she could file an occupational disease claim.²⁰

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds that counsel's arguments are unsubstantiated.

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 left foot fractures were causally related to the accepted June 29, 2013 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 13, 2015 is affirmed.

Issued: January 15, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁰ 20 C.F.R. §§ 10.5(q); 10.101; and 10.116.