

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a right foot injury causally related to the June 3, 2010 employment incident; and (2) whether OWCP properly denied appellant's request for an oral hearing.

FACTUAL HISTORY

This case has previously been before the Board. On June 4, 2010 appellant, then a 37-year-old customs and border patrol officer, filed a traumatic injury claim (Form CA-1), alleging that on June 3, 2010 she developed a bump on the bottom of her right foot and experienced pain when walking and when putting pressure on her big toe. She noted that the cause of the injury was unknown, but that she was working in the vehicle export office and was walking up and down stairs. Appellant did not stop work. In an April 4, 2012 decision, the Board affirmed an April 14, 2011 OWCP decision. The Board found that appellant had not met her burden of proof to establish a right foot injury causally related to her June 3, 2010 employment incident as she submitted insufficient medical evidence addressing causal relationship.³ In a decision dated April 16, 2014, the Board again affirmed a June 18, 2013 OWCP decision,⁴ finding that appellant had failed to meet her burden of proof to establish a right foot injury causally related to her June 3, 2010 employment incident. The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference.

On January 27, 2015 counsel requested reconsideration. He provided a December 16, 2014 report from Dr. Catherine Watkins Campbell, a Board-certified family practitioner specializing in occupational medicine. Dr. Watkins Campbell reported that appellant had developed subacute pain in the right great toe area on June 3, 2010 with no history of prior symptoms. Appellant indicated to Dr. Watkins Campbell that on June 3, 2010 she worked a 12-hour shift and repeatedly had to ascend and descend a flight of seven to eight concrete steps approximately 78 times during that shift. She believed that the stair climbing was the inciting activity for the onset of her symptoms. Appellant reported seeking treatment the next day at a local urgent care facility where right foot x-rays were negative. Dr. Watkins Campbell noted a magnetic resonance imaging (MRI) scan of the right foot revealed aseptic necrosis of the medial sesamoid bone. Appellant reported returning to light-duty work on July 16, 2010 and full duty on August 15, 2010. She underwent a surgical removal of a mass, which was identified as a segment of tendon with mild degenerative changes. Dr. Watkins Campbell noted that on October 12, 2012 Dr. Kenneth Goldstein, a podiatrist, surgically removed the medial sesamoid bone. Appellant subsequently retired on disability.

On physical examination, Dr. Watkins Campbell noted findings that included a moderately antalgic gait, a mildly tender small-sized mass in the plantar fascia of the medial arch, atrophic skin changes and hair loss on the right foot, and asymmetric muscle atrophy with the right. She noted limited right foot dorsiflexion as well as limited plantar flexion, inversion, and eversion. Appellant also had variable decreased sensation to pinprick in the right lower leg.

³ Docket No. 11-1885 (issued April 4, 2012).

⁴ Docket No. 14-23 (issued April 16, 2014).

Dr. Watkins Campbell diagnosed complex regional pain syndrome (CRPS), medial sesamoid fracture of the right foot, and aseptic necrosis of the medial sesamoid bone of the right foot. She referenced an article from the Journal of Foot Surgery titled “Symptomatic Bipartite Sesamoids” (Frankel and Harrington, pages 318-323) and noted that it was probable that appellant’s right medial sesamoid bone and the fibrocartilage connection between the bones was disrupted with repeated hyperextension of the right big toe going up and down the concrete steps. Dr. Watkins Campbell noted that because there was no sharp bony disruption, the x-rays obtained on the date of injury did not identify an acute fracture, but there was “most likely” a fibrocartilage fracture of the right medial sesamoid bone. She opined that the inciting event resulted in significant disruption of the mechanical function of the sesamoid bones within the flexor hallucis tendon, which caused subsequent avascular and aseptic necrosis of one or both of the fragments. Dr. Watkins Campbell advised that the CRPS condition was causally related to the June 3, 2010 injury event. She opined that in all reasonable medical probability repeatedly ascending and descending concrete steps and the repeated extension of the right big toe directly resulted in the separation or fracture of the fibrocartilage of the bipartite medial sesamoid bone. This activity caused a disruption in the manner in which the medial and lateral sesamoid bones function causing inflammation and subsequent necrosis of the medial bone. Dr. Watkins Campbell noted that there was clear evidence of CRPS of the leg. In addition to CRPS, she opined that the diagnosed conditions were work related.

In an April 2, 2015 letter, OWCP notified appellant that it was unable to process her January 27, 2015 reconsideration request because she had appealed her claim to the Board and it was currently being processed. It indicated that she could only elect one method of appeal at a time. OWCP further advised that no further action would be taken on appellant’s reconsideration request received on January 17, 2015.

By letter dated June 19, 2015, received by OWCP on June 23, 2015, again appellant, through counsel, requested reconsideration and indicated that the January 27, 2015 reconsideration request was based on the Board’s decision dated April 16, 2014. She requested OWCP process the timely January 27, 2015 reconsideration request.

In a decision dated May 13, 2016, OWCP denied modification.

On May 25, 2016 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative.

In a decision dated June 6, 2016, an OWCP hearing representative denied appellant’s request for a telephone hearing. It noted that the Board had previously issued a decision on April 16, 2014 on the issue of whether she sustained a June 3, 2010 injury and advised that it did not have jurisdiction to review the decision of the Board. OWCP also noted that, while appellant was not entitled to a hearing as a matter of right, it had further considered the matter, in its

discretion, and found that the hearing request was further denied because appellant could pursue the matter through the reconsideration process.⁵

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁶ has the burden of proof 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 filed within the applicable time limitation 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. 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.⁷

To determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁸ The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁹

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.¹⁰ The weight of medical evidence is determined by its reliability, its

⁵ It appears that OWCP inadvertently indicated that since the Board previously issued a decision on the issue of whether appellant sustained an injury on June 3, 2010 the Branch of Hearings and Review had no jurisdiction to review the Board decision. However, section 8124(b)(1) of FECA, provides that appellant was not entitled to an oral hearing if he or she had previously requested reconsideration pursuant to 5 U.S.C. § 8128(a) of FECA. See *Peggy R. Lee*, 46 ECAB 527 (1995) (where the Board found that appellant's request for an oral hearing was made after OWCP issued its decision on her request for reconsideration made pursuant to 5 U.S.C. § 8128 and therefore appellant was not entitled to an oral hearing before an OWCP hearing representative as a matter of right).

⁶ *Supra* note 2.

⁷ *Gary J. Watling*, 52 ECAB 357 (2001).

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *Id.*

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000).

probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹¹

ANALYSIS -- ISSUE 1

The Board finds that the medical evidence of record is insufficient to establish that appellant sustained a right foot injury due to the June 3, 2010 work incident.

Appellant submitted a December 16, 2014 report from Dr. Watkins Campbell who diagnosed medical sesamoid fracture of the right foot, aseptic necrosis of the medial sesamoid bone of the right foot and complex regional pain syndrome lower extremity. She opined that it was probable that the fibro cartilaginous tissue of appellant's right medial sesamoid bone was most likely disrupted causing a fibrocartilage fracture of the right medial sesamoid bone as a result of repeated hyperextension of the right big toe going up and down the concrete steps. The Board notes that Dr. Watkins Campbell's report provides some support for causal relationship, but is insufficient to establish that the claimed right foot condition was causally related to her employment duties. In her report, Dr. Watkins Campbell opined that it was "probable" and "most likely" that the fibrocartilage fracture of the right medial sesamoid bone was the result of going up and down the concrete steps. At best, this report provides only speculative support for causal relationship.¹² Dr. Watkins Campbell provided insufficient medical reasoning to support her opinion on causal relationship.

Dr. Watkins Campbell further opined that the inciting event of June 3, 2010 resulted in significant disruption of the mechanical function of the sesamoid bones and flexor hallucis tendon, which caused subsequent avascular and aseptic necrosis of one or both of the fragments. She advised that CRPS was causally related to the injury event that occurred on June 4, 2010. Dr. Watkins Campbell referenced medical literature and opined that, in all reasonable medical probability, ascending and descending concrete steps with the repeated extension of the right big toe directly resulted in the separation or fracture of the fibrocartilage of the bipartite medial sesamoid bone. She opined that this activity caused a disruption of the mechanism in which the medial and lateral sesamoid bones function causing ultimate inflammation and subsequent necrosis of the medial bone. Dr. Watkins Campbell noted that there was clear evidence of CRPS of the lower extremity. Again, she did not explain how such activity would result in the diagnosed condition. Dr. Watkins Campbell did not adequately explain why walking on stairs on or about June 3, 2010 was a competent cause or contributor to appellant's diagnosed right foot conditions.¹³ She also did not clearly explain how the referenced medical literature applied to appellant's situation.¹⁴ The Board finds that, although Dr. Watkins Campbell provided some

¹¹ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹² Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

¹³ *Supra* note 12.

¹⁴ *See Roger G. Payne*, 55 ECAB 535 (2004) (excerpts from publications have little probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the articles to the specific factual situation in a case).

support for causal relationship, this report is insufficient to establish the claim as she failed to provide sufficient medical rationale explaining the basis of her conclusion regarding the causal relationship between appellant's right foot condition and the factors of employment.

Consequently, the medical evidence of record is insufficient to establish that the June 3, 2010 work incident caused or aggravated a diagnosed medical condition. Appellant has failed to meet her burden of proof.

On appeal appellant asserts that she has established fact of injury and noted that her condition, specifically possible fracture and osteonecrosis, could be caused by the trauma she reported on June 3, 2010. As noted, however, the Board found she has not submitted sufficient medical evidence to explain how walking on stairs on June 3, 2010 caused or aggravated the diagnosed right foot condition.

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA, concerning a claimant's entitlement to a hearing before a hearing representative, states: Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his or her claim before a representative of the Secretary.¹⁵ A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. In addition to the evidence of record, the claimant may submit new evidence to the hearing representative.¹⁶ The Branch of Hearings and Review, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and must exercise this discretionary authority in deciding whether to grant a hearing.¹⁷ The Board has held that it must exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).¹⁸

ANALYSIS -- ISSUE 2

On May 25, 2016 appellant requested an oral hearing with the Branch of Hearings and Review. The Board finds that, because she had previously requested reconsideration under section 8128 of FECA, she was not entitled to a hearing as a matter of right under section 8124(b)(1). OWCP exercised its discretion and determined that the issue in the case could be

¹⁵ 5 U.S.C. § 8124(b)(1).

¹⁶ 20 C.F.R. § 10.615.

¹⁷ *D.M.*, Docket No. 08-1814 (issued January 16, 2009).

¹⁸ *See R.T.*, Docket No. 08-0408 (issued December 16, 2008).

resolved equally well through a request for reconsideration and the submission of additional evidence. The Board therefore finds that OWCP did not abuse its discretion in denying appellant's request for an oral hearing in its June 6, 2016 decision.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish a right foot injury causally related to the June 3, 2010 employment incident. The Board further finds that OWCP did not abuse its discretion in denying her request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the June 6 and May 13, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 8, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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