

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

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<b>J.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-0020</b>
	)	<b>Issued: August 8, 2018</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Wauwatosa, WI, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*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 October 2, 2017 appellant filed a timely appeal from an August 23, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</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 has established an injury and need for surgery to his left foot and ankle as a consequence of his accepted June 16, 1999 employment injury.

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<sup>1</sup> After OWCP issued its August 25, 2017 decision appellant provided additional evidence with his appeal. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

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

## **FACTUAL HISTORY**

On June 16, 1999 appellant, then a 37-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he sprained his right foot stepping on a stair while in the performance of duty. OWCP accepted the claim for a sprain of the right ankle at the calcaneofibular ligament and tenosynovitis of the right foot and ankle.

On May 4, 2001 Dr. David Becker, a Board-certified orthopedic surgeon, performed a debridement of the right Achilles tendon. Appellant returned to limited-duty employment on June 14, 2001.<sup>3</sup>

Appellant continued to receive periodic medical treatment for his accepted right ankle condition. In a report dated May 20, 2015, Dr. Joseph A. Sizensky, a Board-certified orthopedic surgeon, evaluated him for right tarsal tunnel syndrome, right Achilles tendinitis, and right posterior tibial tendinitis. He indicated that appellant was “starting to have similar symptoms on the left side.”

Dr. Sizensky, on July 15, 2016, performed a follow-up examination for right tarsal tunnel syndrome and right posterior tibial tendinitis. He noted that appellant was “starting to get some achy discomfort in his left foot and ankle from overcompensating, and he feels like he twisted his ankle getting out of a truck at work recently.” On examination Dr. Sizensky found tenderness of the left ankle ligaments and a positive Tinel’s sign without swelling or instability.

Appellant telephoned OWCP on October 21, 2016 and related that he sustained an injury to his left foot that required surgery as a result of his previous accepted right foot injury. OWCP informed appellant that he needed to submit a report from his physician describing how the left foot injury arose from the accepted right foot injury.

By development letter dated October 27, 2016, OWCP notified appellant of the evidence necessary to establish a “recurrence of disability.” It requested that he submit a comprehensive report from his attending physician addressing how his disability resulted from his accepted work injury or from a consequential injury.

A June 22, 2016 magnetic resonance imaging (MRI) scan study of appellant’s left ankle, received by OWCP on December 13, 2016, which revealed sequela of a severe chronic ligamentous injury involving the deltoid, anterior talofibular, and calcaneofibular ligaments, tenosynovitis, fraying of the posterior tibial tendon, achilles tendinosis without a tear, stripping at the fibular attachment of the anterior talofibular ligament, and bone marrow edema consistent with posterior medial ankle impingement.

Dr. Sizensky, on July 13, 2016, noted that appellant’s left ankle symptoms had increased and reviewed the results of the MRI scan study. He recommended a left tarsal tunnel release and posterior tibial tendon exploration and debridement.

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<sup>3</sup> By decision dated December 30, 2003, OWCP reduced appellant’s compensation to zero as his actual earnings as a modified city letter carrier effective February 8, 2003 fairly and reasonably represented his wage-earning capacity.

In a September 7, 2016 progress report, Dr. Sizensky evaluated appellant for bilateral pain in his feet and ankles, worse on the left side. He related, "I believe the majority of his symptoms are from his posterior tibial tendon disease as well as a tarsal tunnel syndrome." Dr. Sizensky provided findings on examination and recommended surgery, noting that appellant had failed conservative treatment.

On December 13, 2016 Dr. Sizensky requested that OWCP authorize a left lower leg tendon revision. On December 16, 2016 he performed an unauthorized left posterior tibial tendon excision debridement with tenolysis, a left flexor digitorum longus tendon transfer, left Achilles lengthening, a left medial displacement calcaneal osteotomy, and a left tarsal tunnel release.<sup>4</sup>

By letter dated December 27, 2016, OWCP advised appellant that the medical evidence of record was currently insufficient to support that he required surgery for a right ankle condition due to his accepted June 16, 1999 employment injury. It informed him that it was referring him for a second opinion examination to determine if his current condition was causally related to his accepted work injury and, if so, whether the requested surgery was appropriate treatment for the condition.

OWCP, on May 23, 2017, referred appellant to Dr. David S. Haskell, a Board-certified orthopedic surgeon, for a second opinion examination. It requested that he address whether appellant sustained a consequential injury to his left ankle due to his accepted June 16, 1999 right ankle injury and, if so, whether it should authorize the surgical procedure of December 16, 2016 as medically necessary to treat the consequential left ankle condition.

In a report dated June 7, 2017, Dr. Haskell reviewed appellant's history of a June 16, 1999 work injury to his right foot and ankle and his resulting medical treatment. He noted that he underwent surgery on his left ankle on December 16, 2016. Dr. Haskell opined that appellant had no further disability due to his right ankle Achilles tendinitis. He further related, "It is my opinion the left foot and ankle pathology has no relationship to his work activity. Specifically his work activity did not contribute to or cause posterior tibial tendinosis or posterior tibial tendon deficiency nor a left pes planovalgus deformity with equinus nor a left tarsal tunnel syndrome." Dr. Haskell found that work factors did not cause the symptoms that necessitated the left foot and ankle surgery. He opined that appellant had work restrictions due to his nonemployment-related left foot and ankle condition.

By decision dated August 23, 2017, OWCP found that appellant had not established a recurrence of disability causally related to his accepted June 16, 1999 work injury. It determined that the medical evidence failed to establish that he sustained a left foot and ankle condition as a consequence of his right ankle and foot injury. OWCP further found that appellant's December 16, 2016 surgery was not authorized.

### **LEGAL PRECEDENT**

Where an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes

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<sup>4</sup> In a May 24, 2017 progress report, Dr. Sizensky noted that appellant was doing well after surgery and had resumed light-duty employment.

that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>5</sup>

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct.<sup>6</sup> The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury. With respect to consequential injuries, the Board has held that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.<sup>7</sup>

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.<sup>8</sup>

Section 8103(a) of FECA provides for the furnishing of services, appliances, and supplies prescribed or recommended by a qualified physician which OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening in the amount of monthly compensation.<sup>9</sup> In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his injury to the fullest extent possible in the shortest amount of time.<sup>10</sup> OWCP has broad administrative discretion in choosing the means to achieve this goal.<sup>11</sup> The only limitation on OWCP's authority is that of reasonableness.<sup>12</sup>

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<sup>5</sup> *Richard A. Neidert*, 57 ECAB 474 (2006); *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>6</sup> See *Mary Poller*, 55 ECAB 483 (2004).

<sup>7</sup> See *S.S.*, 59 ECAB 315 (2008); *Debra L. Dillworth*, 57 ECAB 516 (2006).

<sup>8</sup> *Charles W. Downey*, 54 ECAB 421 (2003)

<sup>9</sup> 5 U.S.C. § 8103; see *Thomas W. Stevens*, 50 ECAB 288 (1999).

<sup>10</sup> *W.T.*, Docket No. 08-812 (issued April 3, 2009); *A.O.*, Docket No. 08-580 (issued January 28, 2009).

<sup>11</sup> *Vicky C. Randall*, 51 ECAB 357 (2000).

<sup>12</sup> *D.C.*, 58 ECAB 629 (2007); *Mira R. Adams*, 48 ECAB 504 (1997).

## ANALYSIS

Initially, the Board notes that OWCP found that appellant had not established a recurrence of disability beginning October 2016 due to his accepted June 16, 1999 right foot and ankle injury. Appellant did not, however, allege that he sustained a spontaneous change in the medical condition that resulted from the prior injury or illness without an intervening injury or new exposure to the work environment, as required to show a recurrence of disability.<sup>13</sup> Instead, he maintained that he sustained a left foot and ankle condition as a consequence of right foot and ankle condition, accepted by OWCP for a right ankle sprain at the calcaneofibular ligament and tenosynovitis of the right foot and ankle. The relevant issue, consequently, is whether appellant has met his burden of proof to establish a consequential left foot or ankle condition as a result of his accepted June 16, 1999 employment injury.

The Board finds that appellant has not submitted sufficient medical evidence to show that he sustained a left foot or ankle condition resulting in a need for surgery as a result of his accepted right foot and ankle injury.<sup>14</sup> OWCP referred him to Dr. Haskell for a second opinion evaluation regarding whether he sustained a consequential left foot or ankle injury. On June 7, 2017 Dr. Haskell reviewed the history of appellant's June 16, 1999 injury and his December 16, 2016 left ankle surgery. He opined that his left foot and ankle condition of posterior tibial tendinosis, posterior tibial tendon deficiency, pes planovalgus deformity with equinus, and left tarsal tunnel syndrome was unrelated his work activities. Additionally, Dr. Haskell opined that the accepted factors of appellant's federal employment did not cause the symptoms which necessitated the left foot and ankle surgery. His opinion, which is based on a thorough review of the evidence and accurate factual and medical history, constitutes the weight of the evidence and establishes that appellant did not sustain a consequential left foot or ankle condition as a result of his June 16, 1999 work injury.<sup>15</sup>

Moreover, the remaining evidence is insufficient to meet appellant's burden of proof. In a progress report dated May 20, 2015, Dr. Sizensky evaluated appellant for right tarsal tunnel syndrome and right tendinitis and noted that he was beginning to experience problems on the left side. On July 15, 2016 he indicated that appellant experienced discomfort in his left foot from overcompensating and that he may have twisted his foot getting out of a truck. While Dr. Sizensky generally advised that he had discomfort in his left foot from overcompensating, he did not specifically find any condition arose as a consequence of the June 16, 1999 work injury. Further, he did not provide any rationale for his finding. The Board has found that medical evidence is of limited probative value if it contains a conclusion regarding causal relationship, but no reasoned medical explanation.<sup>16</sup>

On September 7, 2016 Dr. Sizensky opined that appellant had continued left ankle pain and attributed his symptoms to his posterior tibial tendon disease and tarsal tunnel syndrome. He recommended surgery. Dr. Sizensky did not provide an opinion addressing how the diagnosed

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<sup>13</sup> 20 C.F.R. § 10.5(x).

<sup>14</sup> See *P.J.*, Docket No. 17-0570 (issued October 26, 2017).

<sup>15</sup> See *L.W.*, Docket No. 14-0162 (issued April 7, 2014).

<sup>16</sup> See *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

conditions were caused or aggravated by the accepted employment injury. As he provided no opinion on causal relationship, his report is of little probative value.<sup>17</sup>

The Board finds that the medical evidence of record is insufficient to establish that appellant sustained a left foot or ankle condition as a consequence of his accepted work injury. Additionally, as appellant has not established that he sustained an employment-related left foot or ankle condition, OWCP properly denied authorization of his December 2016 surgery.<sup>18</sup>

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.

### **CONCLUSION**

The Board finds that appellant has not established an injury or need for surgery to his left foot and ankle as a consequence of his accepted June 16, 1999 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 23, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 2018  
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

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<sup>17</sup> See *J.C.*, Docket No. 15-1084 (issued January 5, 2016).

<sup>18</sup> See *V.S.*, Docket No. 17-0854 (issued December 6, 2017).