



## ISSUE

The issue is whether appellant met her burden of proof to establish that she was totally disabled for the period January 27 to April 17, 2015 causally related to her accepted employment injury.

## FACTUAL HISTORY

On December 20, 2014 appellant, a 28-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained a left ankle sprain on December 13, 2014 as a result of walking through grass in the performance of duty. OWCP accepted the claim for left ankle sprain. On February 4, 2015 appellant underwent a posterior tibial tendon debridement and arthrodesis of the left lower extremity. She later underwent an incision, drainage, and hardware removal of the left foot on April 22, 2015.<sup>3</sup> Appellant has not returned to work.

Appellant, through counsel, filed a claim for disability (Form CA-7) for the period January 27 to March 6, 2015. She submitted hospital records relating to her February 4, 2015 surgery in support of her claim.

In a January 13, 2015 report, Dr. Ali Anaim, a podiatric surgeon, noted that appellant sustained an injury while working approximately one month prior and diagnosed calcaneofibular (ligament) ankle sprain, osteoarthritis, tenosynovitis, and pain in the left ankle and foot.

On February 9, 2015 Dr. Anaim noted that appellant was being treated for left foot and ankle pain due to a slip and fall. He reported that he had performed a subtalar joint arthrodesis on February 4, 2015. Dr. Anaim explained that, due to appellant's previous arthrodesis and being a high risk surgery site with a high probability of nonunion, she was advised to start on a bone growth stimulator as soon as possible to promote healing at the fusion site. He prescribed a bone growth stimulator and recommended its authorization by OWCP in order to achieve bony union and avoid additional costly surgical intervention.

In a February 25, 2015 report, Dr. Anaim saw appellant for a follow-up examination and found that x-rays revealed good fusion at the surgical site. He opined that she was totally disabled for work and advised that she continue with casting and avoid weight-bearing for three weeks.

In a March 17, 2015 development letter, OWCP advised appellant that her claim for compensation for disability for the period January 27 to March 6, 2015 could not be processed because the medical evidence of record indicated that she was being treated for and claiming disability due to conditions that were not accepted under the current claim. It afforded her 30 days to submit additional medical evidence establishing how her diagnoses, surgeries, and disability were causally related to the December 13, 2014 employment injury.

In response, appellant submitted x-rays of the left foot and ankle dated February 25, 2015 demonstrating stable changes of subtalar joint arthrodesis and no new abnormalities. A March 19, 2015 x-ray of the left foot revealed postsurgical changes in the hind foot and no acute bony

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<sup>3</sup> OWCP did not authorize either of these procedures.

abnormality. An April 7, 2015 x-ray of the left ankle revealed status post subtalar joint arthrodesis and no significant interval change.

Appellant, through counsel, filed additional claims for disability for the period March 7 to April 17, 2015. She further submitted physical therapy reports dated April 13 to 16, 2015 in support of her claim.

In an April 30, 2015 letter, OWCP requested additional medical evidence establishing appellant's disability for work during the period claimed and afforded her 30 days to respond to its inquiries. It noted that Dr. Anaim's February 9, 2015 report indicated that the injury was due to a "slip and fall" which was discrepant with the accepted employment injury of walking through grass. OWCP requested a well-rationalized narrative report from a physician containing a complete and accurate factual and medical history supported by objective findings that explained how appellant's diagnoses, surgeries, and disability were causally related to the December 13, 2014 employment injury.

By decision dated April 30, 2015, OWCP denied appellant's claim for disability for the period January 27 through March 6, 2015 finding that the medical evidence of record was insufficient to support disability due to the employment injury.

On May 18, 2015 counsel requested an oral hearing by a representative of OWCP's Branch of Hearings and Review. Appellant submitted two February 4, 2015 x-rays of the left foot and ankle demonstrating two newly placed screws in the subtalar joint and a physical therapy report dated June 16, 2015 in support of her claim. She also resubmitted hospital records dated February 4, 2015 relating to her previous surgery, including a report from Dr. Jocelyn Edathil, an internist, who indicated that appellant had a past medical history of asthma and a recent fall while at work.

In a May 11, 2015 report, Dr. Anaim noted that appellant sustained a sprain of the left foot and ankle on grass on December 13, 2014 while delivering mail. He opined that her work injury caused her synovitis, extreme synovitis, and tenosynovitis of her tibialis posterior. Dr. Anaim noted that appellant underwent a surgical procedure when she was 14-years old for flatfoot: arthrodesis plus removal of accessory navicular.

By decision dated June 29, 2015, OWCP denied appellant's claim for disability for the period March 7 to April 17, 2015 finding that the medical evidence of record was insufficient to support disability due to the employment injury.

On July 6, 2015 counsel requested an oral hearing by a representative of OWCP's Branch of Hearings and Review. Appellant submitted progress reports dated February 18 through April 20, 2015 from Dr. Anaim who reiterated his diagnoses and medical opinions. In a March 19, 2015 report, Dr. Anaim indicated that she was seen in 2012 for left ankle pain, unrelated to any work injury, and was given an injection. He noted that appellant subsequently sustained an injury while delivering mail at work that caused synovitis and unstable subtalar joint that lead to her fusion surgery. On March 30, 2015 Dr. Anaim noted that she never had a preexisting condition with her left foot and ankle, reiterating that she had a surgical procedure when she was a child for arthroereisis, but noting that she did very well postoperatively in both feet. He also reiterated that

appellant was seen in 2012 for a minor injection of her left ankle, which was not employment related.

Appellant's disability claims were combined and a hearing was held before an OWCP hearing representative on September 11, 2015 *via* video conference. She provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

Subsequently, appellant submitted an October 16, 2015 report from Dr. Anaim who reiterated his diagnoses and recommended a return to physical therapy. She also submitted an April 20, 2015 x-ray of the left ankle demonstrating disuse osteoporosis in the foot and an August 19, 2015 x-ray of the left foot revealing subtalar joint arthrodesis with bony ankylosis, soft tissue swelling, and diffuse osteopenia.

By decision dated December 9, 2015, OWCP's hearing representative affirmed the prior decisions, finding the medical evidence of record insufficient to establish that appellant was disabled for the period January 27 to April 17, 2015 due to the accepted condition of left ankle sprain. The hearing representative further found that the medical evidence of record was insufficient to establish a causal relationship between appellant's surgical procedures and additional diagnoses and the December 13, 2014 employment injury.

Subsequently, appellant submitted progress reports dated November 20 and December 11, 2015 from Dr. Anaim who noted that she was continuing with physical therapy and requested custom-molded orthotics and a cane for support. She also submitted a December 11, 2015 x-ray of the left foot demonstrating no acute fracture or dislocation, no evidence to suggestion complication from subtalar arthrodesis, and no significant ankle joint degenerative changes.

OWCP referred appellant to Dr. Willie Thompson, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of her employment-related condition. In his January 15, 2016 report, Dr. Thompson reviewed her medical history and a statement of accepted facts (SOAF). He found that physical examination of the left foot and ankle revealed mild diffuse swelling, as well as well-healed scars both medially and laterally at the left ankle. Appellant had 20 degrees of plantar flexion and 15 degrees of dorsiflexion. There was only minimal motion at the hind foot and some mild tenderness present. Appellant had complete numbness over the lateral three toes to the left foot and a noticeable limp with ambulation. Dr. Thompson reported that she was seven months post-op and continued with significant complaints related to the foot and ankle. He opined that appellant's present complaints related to the December 13, 2014 employment injury and that she required additional treatment of her conditions. Dr. Thompson further opined that she had not yet reached maximum medical improvement and that her limitations due to the work injury were not due to a prior or preexisting condition. He advised that appellant was capable of returning to work in a sedentary capacity with the following restrictions: walking, standing, lifting, and squatting up to two hours per day.

In a January 18, 2016 report, Dr. Anaim found that appellant was improving and released her to full-duty work in one month. On February 11, 2016 he recommended a Provant Therapy System twice a day for 30 minutes daily on her left ankle.

In a February 17, 2016 letter, OWCP requested clarification from Dr. Thompson regarding his second opinion as to the nature and extent of appellant's work-related conditions based on the SOAF. It stated that it was unclear whether he utilized the SOAF as a framework to provide his medical opinion on whether her surgeries were appropriate and necessary due to the accepted work injury. OWCP asked Dr. Thompson to specifically address how appellant's preexisting conditions and current disability from work, resulting from surgeries which had not been authorized by OWCP, were caused or aggravated by the December 13, 2014 employment injury.

In a March 10, 2016 addendum report, Dr. Thompson advised that he had no opinion as to whether or not the surgical procedures performed on appellant's foot and ankle related to the December 13, 2014 employment injury because there was inadequate information in the medical evidence of record. He noted that the surgeries were performed by a podiatrist and the history she provided was that these procedures were related to the December 13, 2014 work injury, but at no time did he or the podiatrist specifically indicate as to whether these surgeries were related to her employment. Dr. Thompson further opined that it was reasonable to accept that appellant's preexisting conditions of osteoarthritis and synovitis of the subtalar joint were aggravated by the December 13, 2014 work injury, but would have been temporary and resolved within a period of three to four weeks.

On May 6, 2016 counsel requested reconsideration and submitted a May 3, 2016 report from Dr. Anaim who noted that appellant had been treated for her left foot and ankle condition since she was 11-years old and underwent excision of accessory bone at the insertion of the tibialis posterior when she was 12-years old, as well as suspension of her arch. He noted that she had a successful procedure on both right and left sides. Dr. Anaim indicated that appellant had multiple positions at work where she did her duties uneventfully without any problems until December 13, 2014 when she suffered an injury with disruption of some ligaments and a partial tear of her tibialis posterior while walking on an uneven surface of grass to deliver mail. He opined that she could not heal her injury due to the disruption of her ligaments surrounding the joint and the aggravation of a previous history of a surgical procedure on her left foot. Dr. Anaim concluded that appellant had a completely healed surgical procedure when she was 12-years old, followed by multiple pregnancies as well as multiple jobs which she had performed uneventfully until December 13, 2014 when she was forced to walk on an uneven surface, which caused some disruption of her ligaments surrounding the joint which in turn caused instability of her subtalar joint and a partial tear of her tibialis posterior requiring surgical correction and fusion of her subtalar joint. Appellant further submitted progress reports dated March 7 through June 28, 2016 from Dr. Anaim who reiterated his diagnoses and medical opinions.

By decision dated August 4, 2016, OWCP denied modification of its prior decision relying upon Dr. Thompson's second opinion reports dated January 15 and March 10, 2016.

### **LEGAL PRECEDENT**

Section 8102(a) of FECA<sup>4</sup> sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: "The United States shall pay compensation as

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<sup>4</sup> 5 U.S.C. § 8102(a).

specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty....” In general the term “disability” under FECA means “incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.”<sup>5</sup> This meaning, for brevity, is expressed as disability for work.<sup>6</sup> For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.<sup>7</sup> Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by the preponderance of the reliable probative and substantial medical evidence.<sup>8</sup>

Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used under FECA, and is not entitled to compensation for loss of wage-earning capacity. The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>9</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP referred appellant together with a SOAF and the medical evidence of record to Dr. Thompson for second opinion examination to determine the nature and extent of her accepted conditions. In his January 15, 2016 report, Dr. Thompson noted that she continued with significant complaints related to her left foot and ankle. He opined that appellant’s conditions were causally related to the December 13, 2014 employment injury and required additional treatment. Dr. Thompson further opined that she had not yet reached maximum medical improvement and her limitations due to the work injury were not due to a prior or preexisting condition. He advised that appellant was capable of returning to work in a sedentary capacity with restrictions.

By letter dated February 17, 2016, OWCP requested clarification from Dr. Thompson regarding his second opinion, finding that it was unclear whether he utilized the SOAF as a framework to provide his medical opinion on whether appellant’s surgeries were appropriate and necessary due to the accepted work injury. It asked him to specifically address how her preexisting

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<sup>5</sup> 20 C.F.R. § 10.5(f); *see also* *William H. Kong*, 53 ECAB 394 (2002).

<sup>6</sup> *See Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>7</sup> *See William A. Archer*, 55 ECAB 674 (2004).

<sup>8</sup> *See Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

<sup>9</sup> *Id.*

conditions and current disability from work, resulting from surgeries which had not been authorized by OWCP, were caused or aggravated by the December 13, 2014 employment injury.

Based on a review of Dr. Thompson's March 10, 2016 addendum report, the Board finds that he provided seemingly contradictory answers and failed to fully explain the nature and extent of appellant's accepted conditions and related disability and was thus equivocal in nature. Dr. Thompson noted that he had no opinion as to whether or not the surgical procedures performed on her left foot and ankle were related to the December 13, 2014 employment injury. He further opined that it was reasonable to accept that appellant's preexisting conditions of osteoarthritis and synovitis of the subtalar joint were aggravated by the December 13, 2014 work injury, but would have been temporary and resolved within a period of three to four weeks. The Board finds that Dr. Thompson failed to address OWCP's question regarding appellant's surgery-related disability. The Board further finds that Dr. Thompson's opinion regarding her preexisting conditions is speculative and equivocal in nature.<sup>10</sup> A physician's opinion on causal relationship must be based on a complete factual and medical background and must be supported by medical rationale.<sup>11</sup> Under the circumstances, additional clarification of these medical issues are necessary.<sup>12</sup> Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>13</sup>

It is well established that, proceedings under FECA are not adversarial in nature and while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>14</sup> When OWCP selects a physician for an opinion on causal relationship, it has an obligation to secure, if necessary, clarification of the physician's report and to have a proper evaluation made.<sup>15</sup> Because it referred appellant to Dr. Thompson, OWCP had the responsibility to obtain a report to resolve the issue of whether appellant was disabled for the period January 27 to April 17, 2015 causally related to the employment injury. As Dr. Thompson failed to provide a consistent sufficient response after being asked for clarification, OWCP should schedule a second opinion examination with a new physician.<sup>16</sup>

On remand OWCP shall refer appellant to a new second opinion physician to address whether her claimed disability for the period January 27 to April 17, 2015 is causally related to

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<sup>10</sup> Medical opinions that are speculative or equivocal in character are of little probative value. See *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>11</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>12</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.3f(2) (July 2011).

<sup>13</sup> *Richard F. Williams*, 55 ECAB 343, 346 (2004).

<sup>14</sup> See *Phillip L. Barnes*, 55 ECAB 426 (2004).

<sup>15</sup> See *W.C.*, Docket No. 14-0633 (issued June 19, 2014); *S.E.*, Docket 08-2243 (issued July 20, 2009).

<sup>16</sup> See *E.B.*, Docket No. 17-0795 (issued January 18, 2018); *supra* note 12 at Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.9(j) (issued September 2010 and June 2015).

her December 13, 2014 employment injury and whether the acceptance of her claim should be expanded to include any additional conditions.<sup>17</sup> After it has developed the medical record consistent with the above-noted directive, it shall issue a *de novo* decision.

**CONCLUSION**

The Board finds that this case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 4, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: June 15, 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> When a medical evaluation is made at its request, OWCP has the responsibility of obtaining a proper evaluation. See *Leonard Gray*, 25 ECAB 147, 151 (1974).