

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

J.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Dallas, TX, Employer**

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**Docket No. 18-0670
Issued: September 11, 2018**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 8, 2018 appellant filed a timely appeal from a December 29, 2017 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 has met her burden of proof to establish a left lower extremity injury due to factors of her federal employment.

FACTUAL HISTORY

On October 14, 2016 appellant, then a 52-year-old supervisor of distribution, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury to her left lower extremity due to factors of her federal employment. She advised that she had been a mail handler

¹ 5 U.S.C. § 8101 *et seq.*

working on the north dock where she loaded, pushed, and pulled equipment, loaded trucks, and staged equipment on the dock for six hours per day. Appellant asserted that the continuous walking she engaged in at work had caused burning, swelling, tingling, and cramps in her left ankle/heel which moved up the back side of her left leg and calf muscle. She reported that she first became aware of her claimed condition on December 30, 2015 and first realized on October 4, 2016 that it was caused or aggravated by her federal employment. Appellant did not stop work.

In an October 19, 2016 letter, appellant's immediate supervisor indicated that appellant was hired by the employing establishment on January 1, 1998 as a mail handler. The physical requirements of the mail handler job included lifting 70 pounds, walking, standing, bending, stooping, pushing, pulling, twisting, fine manipulation, and simple grasping for at least eight hours per day, five days per week. The supervisor noted that appellant was on the overtime list, so she might have worked up to 10 to 12 hours per day for five days per week. She indicated that appellant was promoted to a supervisor of distribution position in the spring of 2016, a position which involved supervising the operation of three automated flat sorter machines. The supervisor of distribution position required appellant to walk continuously.

The findings of an October 24, 2016 magnetic resonance imaging (MRI) scan of appellant's left foot contained an impression of navicular bone edema with no evidence of fracture, mild osteoarthritis of the first metatarsophalangeal joint, and inferior calcaneal spur suggesting the patient suffered from plantar fasciitis in the past. An October 25, 2016 MRI scan of appellant's left ankle contained an impression of grade 1 strain and mild intrasubstance partial tearing within the distal Achilles tendon, tibialis posterior and flexor hallucis longus tenosynovitis, grade 1 strain of the peroneal tendons near the level of the calcaneocuboid articulation, small tibiotalar and subtalar ankle effusions, bone edema within the navicular bone (without displaced fracture) -- most likely related to contusion "from the patient's injury," and edematous inferior calcaneal spur with minimal plantar fascial edema reflecting chronic plantar fasciitis and a mild superimposed acute component.²

In a November 4, 2016 development letter, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation as to how the reported employment activities caused or aggravated a diagnosed medical condition. In an attached questionnaire, it requested that she provide a detailed description of the work duties that she believed caused or aggravated her claimed condition, including a description of how often and for how long she performed such duties. OWCP afforded appellant 30 days to respond. Appellant did not respond within the period afforded by OWCP.

In a November 4, 2016 letter, OWCP also requested additional information from the employing establishment regarding appellant's physical requirements and the frequency and duration of her various work duties. In response, appellant's immediate supervisor submitted a November 16, 2016 letter which contained the same text as her October 19, 2016 letter.

By decision dated January 23, 2017, OWCP accepted the employment factors as alleged, including the fact that appellant engaged in loading, pushing, and pulling equipment, loading

² The clinical history portion of the October 25, 2016 report indicates that appellant reported having a "work-related injury with ankle pain."

trucks, and staging equipment. However, it denied appellant's claim because she failed to submit medical evidence containing a history of her injury and a medical diagnosis made in connection with the accepted employment factors.³

On April 25, 2017 appellant requested reconsideration of OWCP's January 23, 2017 decision.

In an October 4, 2016 report, Dr. Christopher R. Mann, an attending Board-certified family practitioner, indicated that appellant reported that she had worked for the employing establishment for the past 18 years. Appellant advised that she worked as a supervisor for the past year, but prior to that she worked as a mail handler up until November 2015. Dr. Mann noted that she reported that she was working as a mail handler when she sustained an insidious injury to her left foot and ankle on November 30, 2015. Appellant reported that she was performing her usual work duties when she experienced a burning sensation shooting from her left ankle up to her left knee and her left leg started to swell and ache. She advised that these symptoms increased with the activities of standing and walking and she described her work duties as including pushing/pulling objects such as mail containers all day long, as well as engaging in lots of standing and walking. Dr. Mann indicated that appellant denied any prior injury to her left leg/foot or any history of hobbies, sports, or other personal activities that would contribute to her reported condition. He detailed the findings of the physical examination he conducted on October 4, 2016, noting that she had 5/5 left leg strength and negative results upon radiculopathy and straight leg testing of her left leg. Dr. Mann discussed appellant's October 24 and 25, 2016 MRI scans and diagnosed left Achilles tendinitis, left ankle sprain, left plantar fasciitis, and left peroneal tendinitis. He noted, "The employment factors of doing above[-]mentioned activities at work have with reasonable medical certainty caused the injuries to her left ankle and foot."⁴

By decision dated July 19, 2017, OWCP denied appellant's claim for an employment-related occupational injury. It modified its January 23, 2017 decision to reflect that she had established the medical component of the fact of injury, but that her claim remained denied because she failed to establish causal relationship between the claimed conditions and the accepted employment factors. OWCP indicated that, in his October 4, 2016 report, Dr. Mann diagnosed conditions which he felt were related to appellant's work duties, but that he failed to provide sufficient medical rationale to establish causal relationship between those conditions and appellant's work duties.

On October 3, 2017 appellant requested reconsideration of OWCP's July 19, 2017 decision.

In a September 5, 2017 report, Dr. Mann indicated that he was providing further explanation of the mechanics of the employment injury "claimed for the left foot and ankle on

³ OWCP indicated that the diagnostic testing submitted by appellant was insufficient to establish the medical component of the fact of injury.

⁴ Dr. Mann indicated that, after full review of the available records, additional diagnostic testing might be required. He noted that appellant could perform regular-duty work with restrictions per a written duty status report (Form CA-17), but the record does not contain a completed Form CA-17.

November 30, 2015.” He noted that appellant reported that her mail handler duties required a lot of pushing and pulling of heavy containers and wire cages, as well as lots of walking and standing for long hours on uneven surfaces. Dr. Mann noted that appellant reported that, when she was pushing the various large containers of mail, her left leg was her dominant push-off leg and lots of force was repeatedly exerted into her left foot and ankle on a daily basis. He noted that the repetitive strain pattern was consistent with the physical findings of tender left ankle collateral ligaments and inflamed left peroneal tendon and indicated that this same repetitive push-off strain would cause inflammation in the left Achilles tendon as well. Dr. Mann posited that the lateral strain placed on appellant’s foot and ankle on a daily basis was the cause of the soft tissue edema and injury which was seen on the October 2017 MRI scans of her left foot and ankle. He noted that the MRI scan of her left ankle reflected this straining pattern with intrasubstance partial tearing within the distal Achilles tendon, mild tenosynovitis and grade 1 strain of the peroneal tendons, and proximal plantar fascia of a mildly edematous nature. Dr. Mann opined that appellant presented with a historical description that was consistent with her positive objective physical findings. He indicated that appellant’s diagnostic study results “confirmed injuries to her left Achilles tendon, plantar fascia, peroneal tendon, and lateral stability of the ankle within reasonable medical certainty caused by the repeated strain the patient exerts into her left ankle and foot with each heavy push at her station.”

By decision dated December 29, 2017, OWCP denied modification of its July 19, 2017 decision. It determined that Dr. Mann’s September 5, 2017 report was not sufficiently well-rationalized to establish causal relationship between the diagnosed conditions and the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA, that the 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.⁵ To establish fact of injury, an employee must submit evidence sufficient to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged.⁶ An employee must also establish that such event, incident, or exposure caused an injury.⁷ 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.⁸

⁵ 5 U.S.C. § 8101(1); *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

⁷ *Id.*

⁸ *R.H.*, 59 ECAB 382 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

OWCP regulations define the term “[o]ccupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.⁹ To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.¹⁰

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.¹¹ 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 established employment factors.¹²

ANALYSIS

The Board finds that the case is not in posture for decision regarding whether appellant met her burden of proof to establish a left lower extremity injury due to factors of her federal employment.

Appellant submitted an October 4, 2016 report from Dr. Mann, an attending physician, who indicated that appellant reported that she had worked for the employing establishment for the past 18 years. She reported to Dr. Mann that she worked as a supervisor for the past year, but prior to that she worked as a mail handler up until November 2015. Dr. Mann noted that she reported that she was working as a mail handler when she sustained an insidious injury to her left foot and ankle on November 30, 2015. Appellant reported that she was performing her usual work duties when she experienced a burning sensation shooting from her left ankle up to her left knee and her left leg started to swell and ache. She described her work duties as including pushing/pulling objects such as mail containers all day long, as well as engaging in lots of standing and walking. Dr. Mann diagnosed left Achilles tendinitis, left ankle sprain, left plantar fasciitis, and left peroneal tendinitis and noted, “The employment factors of doing above[-]mentioned activities at work have with reasonable medical certainty caused the injuries to her left ankle and foot.”

Appellant also submitted a September 5, 2017 report from Dr. Mann who advised that he was providing further explanation of the mechanics of the employment injury claimed for appellant’s left foot and ankle. Dr. Mann noted that appellant reported that her mail handler duties required a lot of pushing and pulling of heavy containers and wire cages, as well as a lot of walking and standing for long hours on uneven surfaces. He indicated that she reported that, when she was

⁹ 20 C.F.R. § 10.5(q); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.2b (June 2011).

¹⁰ *D.H.*, Docket No. 15-1876 (issued January 29, 2016); *D.I.*, 59 ECAB 158 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

¹² *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

pushing the various large containers of mail, her left leg was her dominant push-off leg and lots of force was repeatedly exerted into her left foot and ankle on a daily basis. Dr. Mann opined that the lateral strain placed on appellant's foot and ankle on a daily basis was the cause of the soft tissue edema and injury which was seen on the October 2017 MRI scans of her left foot and ankle. He noted that the repetitive strain pattern was consistent with the physical findings of tender left ankle collateral ligaments and inflamed left peroneal tendon and indicated that this same repetitive push-off strain would cause inflammation in the left Achilles tendon as well. He also indicated that appellant's diagnostic study results confirmed injuries, including those to her left Achilles tendon, plantar fascia, and peroneal tendon, which were caused by the repeated strain she "exerts into [appellant's] left ankle and foot with each heavy push at her station."

These reports contain a history of injury, diagnoses, and an opinion that appellant sustained a left lower extremity injury due to factors of her federal employment. While Dr. Mann's reports are insufficient to meet appellant's burden of proof, they do raise an uncontroverted inference of causal relation between the accepted employment factors and her diagnosed left lower extremity conditions, and are sufficient to require OWCP to undertake further development of appellant's claim.¹³

Thus, the Board finds that further development is required to determine whether appellant sustained a left lower extremity injury due to factors of her federal employment.¹⁴ On remand OWCP should prepare a statement of accepted facts and refer appellant to an appropriate Board-certified specialist for a second opinion examination and an evaluation regarding whether she has sustained injury causally related to the accepted employment factors. Following any necessary further development, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met her burden of proof to establish a left lower extremity injury due to factors of her federal employment. The case is remanded to OWCP for further development.

¹³ See *John J. Carlone*, 41 ECAB 354 (1989).

¹⁴ *D.C.*, Docket No. 14-1312 (issued May 6, 2015); *K.M.*, Docket No. 12-0726 (issued January 22, 2013); *D.N.*, Docket No. 09-0651 (issued April 20, 2010).

ORDER

IT IS HEREBY ORDERED THAT the December 29, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further action consistent with this decision.

Issued: September 11, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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