

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

S.O., Appellant)	
)	
and)	Docket No. 19-0307
)	Issued: June 18, 2019
)	
U.S. POSTAL SERVICE, POST OFFICE,)	
West Seneca, NY, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 November 27, 2018 appellant, through counsel, filed a timely appeal from a September 26, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).²

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² The Board notes that, during the pendency of this appeal, OWCP issued a January 3, 2019 decision which expanded the acceptance of appellant's claim to include left plantar fascia tear. This decision, however, is null and void as the Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s). *See* 20 C.F.R. §§ 501.2(c)(3), 10.626; *see also M.C.*, Docket No. 18-1278, n.1 (issued March 7, 2019); *Lawrence Sherman*, 55 ECAB 359, 360 n.4 (2004); *Douglas E. Billings*, 41 ECAB 880 (1990).

Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

ISSUE

The issue is whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include additional left foot and left knee conditions causally related to her accepted May 9, 2017 employment injury.

FACTUAL HISTORY

On May 10, 2017 appellant, then a 53-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 9, 2017 she sustained a left foot injury when she stepped on a protruding metal pipe (fencing post) as she crossed a corner lawn while in the performance of duty. She alleged that it was painful to walk on her swollen and tender foot. Appellant stopped work on the filing date of her claim.

On May 9, 2017 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) authorizing medical treatment for appellant's claimed employment incident on that date.

OWCP subsequently received a medical report dated May 10, 2017 by Dr. Joseph P. Cronin, a Board-certified internist. Dr. Cronin noted a history that appellant sustained a left foot injury one day ago while at work. He related her medical history and findings on physical examination. Dr. Cronin provided an assessment of left plantar fasciitis and sprain of the left foot.

In a left foot x-ray report dated May 10, 2017, Dr. Mark Perry, a radiologist, provided an impression of normal left foot.

A work status report dated May 18, 2017 by Liane Kirchberger, a physician assistant, diagnosed left foot strain and plantar fasciitis and provided appellant's work restrictions. In a duty status report (Form CA-17) of the same date, Ms. Kirchberger indicated that appellant sustained a left foot strain due to injury. She advised that appellant could resume work with restrictions.

Dr. Cronin, in an undated Part B of the Form CA-16, attending physician's report, reiterated his diagnoses of plantar fasciitis and sprain of the left foot. He also noted appellant's

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the September 26, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

work restrictions. In a work status report dated May 10, 2017, Dr. Cronin further addressed her work restrictions.

In a letter dated May 19, 2017, Joshua Weeks, a certified physician assistant, noted that appellant was seen in his office on that date. He related that she was unable to work due to her medical condition. Mr. Weeks indicated that appellant could return to work on May 29, 2017 without medical restrictions.

In a report dated May 18, 2017, Dr. Jerry Ulatowski, a pediatrician, noted that appellant presented for a follow-up evaluation of her left foot injury which occurred when she stepped on a metal post pipe at work on May 9, 2017. He discussed examination findings and provided an assessment of left foot strain, subsequent encounter.

A report dated May 19, 2017 by Dr. Robert Erickson, a Board-certified family practitioner, noted a history of the May 9, 2017 employment incident. The report provided examination findings and assessments of pain in the left ankle and joints of the left foot, and plantar fascial fibromatosis. Dr. Erickson checked a box marked “yes” indicating that the described incident was the medical cause of appellant’s injury/illness. Additional boxes were checked “yes” indicating that her complaints were consistent with her history of injury/illness and that her history of injury/illness was consistent with objective findings. It was determined that appellant had 75 percent temporary impairment.

Mr. Weeks, in a work capacity evaluation (Form OWCP-5c) dated June 2, 2017, noted that although appellant was unable to perform her usual job without restrictions because she was unable to walk extended distances, she could work eight hours a day with restrictions for one to two weeks.

In a development letter dated June 7, 2017, OWCP advised appellant that when her claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work. The claim was administratively approved to allow payment for limited medical expenses, but the merits of the claim had not been formally adjudicated. OWCP advised that, because appellant had not returned to full-time work, her claim would be formally adjudicated. It requested that she submit factual and medical information, including a comprehensive report from her physician regarding how the reported work incident caused or aggravated her claimed injury. OWCP afforded appellant 30 days to submit the necessary evidence.

In a letter dated May 26, 2017, Mr. Weeks noted that appellant was seen in his office on that date and that she was unable to return to work until further notice.

In a narrative report dated June 19, 2017, Dr. Lee D. Billing, an attending podiatrist, noted a history and reported examination findings and provided assessments of other sprain of the left foot, initial encounter, and left foot pain. Dr. Billing, in a June 26, 2017 duty status report (Form CA-17), diagnosed other specified injury of intrinsic muscle and tendon at ankle and foot level, left foot, subsequent encounter due to appellant’s May 9, 2017 injury. He advised that she was unable to perform her regular work duties. In an attending physician’s report (Form CA-20) dated June 28, 2017, Dr. Billing reiterated appellant’s history of injury. He diagnosed tear of the plantar fasciitis and tendinitis of the left foot. Dr. Billing checked a box marked “yes” indicating that the

diagnosed conditions were caused or aggravated by the described employment activity. He advised that appellant was totally disabled from June 19, 2017 through the date of his examination.

By decision dated July 21, 2017, OWCP accepted that the May 9, 2017 employment incident occurred as alleged. However, appellant's claim remained denied because the medical evidence of record did not contain a rationalized opinion relating her diagnosed left foot conditions to the accepted employment incident.

OWCP received an additional report dated July 17, 2017 by Dr. Billing in which he continued to assess appellant as having a sprain of the left foot, initial encounter, and left foot pain. In a report dated July 27, 2017, Dr. Billing maintained that appellant's left foot injury, which occurred while she was on her route on May 9, 2017, was definitely a workers' compensation injury as she was injured while delivering mail.

In a left foot magnetic resonance imaging (MRI) scan report dated June 26, 2017, Dr. Paul Pizzella, a Board-certified diagnostic radiologist, provided an impression of tear of the medial band of the plantar fascia with splitting, thickening, and internal edema. He indicated that inflammatory changes were seen in the adjacent flexor digitorum brevis muscle and subcutaneous tissues. Dr. Pizzella related that the findings were acute in nature.

On August 11, 2017 appellant requested reconsideration of OWCP's July 21, 2017 decision and submitted additional medical evidence. In an additional report dated July 27, 2017, Dr. Billing diagnosed left foot tear of the plantar fasciitis, as verified by a left foot MRI scan.

In attending physician reports (Form CA-20) dated August 16 and 30, 2017, Dr. Billing continued to diagnose tear of the plantar fasciitis and tendinitis of the left foot. He again checked a box marked "yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity. Dr. Billing noted that appellant was totally disabled for the period June 19 through September 29, 2017. In reports dated July 17 and August 15, 2017, he continued to provide assessments of left foot pain and sprain of the left foot, initial encounter. Dr. Billing also provided an assessment of other sprain of the left foot, subsequent encounter.

In an August 21, 2017 report, Dr. Erickson noted a history that appellant was injured while working as a mail carrier. He diagnosed a rupture of the plantar fasciitis of the left foot. Dr. Erickson advised that appellant was unable to work from May 9 through October 30, 2017.

In a duty status report (Form CA-17) dated July 13, 2017, Dr. Billing provided a diagnosis of healing plantar fascial tear, left foot. He indicated that the diagnosis was due to the accepted May 9, 2017 employment incident. Dr. Billing advised that appellant could return to work with restrictions, four hours a day. In attending physician reports (Form CA-20) dated September 13 through October 31, 2017, he continued to diagnose plantar fasciitis tear of the left foot. Dr. Billing also diagnosed possible complex regional pain syndrome, peroneal tendinitis, and stress fracture of the fifth metatarsal of the left foot. He checked a box marked "yes" indicating that the diagnosed conditions were caused or aggravated by the accepted May 9, 2017 employment incident. Dr. Billing also advised that appellant was totally disabled for the period June 19 through September 27, 2017. Appellant could resume light-duty work on September 18, 2017 and regular work on October 16, 2017. Dr. Billing later determined that she was unable to resume her regular

work. In a prescription note dated September 13, 2017, he indicated that appellant may return to work, four hours a day, on September 18, 2017.

By decision dated November 9, 2017, OWCP modified its July 21, 2017 decision to reflect that the medical evidence of record was sufficient to establish that appellant sustained a left foot sprain as a result of the accepted May 9, 2017 employment incident. However, the claim remained denied as causal relationship had not been established between the other diagnosed left foot medical conditions and the accepted employment injury.

OWCP received additional reports by Dr. Billing. In attending physician reports (Form CA-20) dated November 8, 22, and 29, 2017, Dr. Billing continued to check a box marked “yes” indicating that appellant’s diagnosed tear of the plantar fasciitis, stress fracture of the fifth metatarsal, and peroneal tendinitis of the left foot were caused or aggravated by the accepted May 9, 2017 employment injury. He also continued to address appellant’s work capacity. In a November 21, 2017 narrative report, Dr. Billing noted appellant’s left foot complaints and findings on physical examination. He provided assessments of peroneal tendinitis of the left leg and reiterated his diagnosis of other specified injury of intrinsic muscle and tendon at ankle and foot level, left foot, subsequent encounter. In a Form OWCP-5c report dated November 29, 2017, Dr. Billing indicated that appellant was restricted to four hours of sitting work. On that same day, he prescribed an MRI scan of her left foot and reiterated his diagnosis of left foot plantar fasciitis tear.

On December 4, 2017 the employing establishment informed OWCP that appellant had returned to work on September 18, 2017 for four hours and stopped work again on September 23, 2018. Appellant returned to work again on October 2, 2017 for four hours a day with restrictions.

OWCP received additional reports dated December 7, 2017 through June 6, 2018 from Dr. Billing who reiterated his prior diagnoses and opinion on causal relationship. Dr. Billing also diagnosed other enthesopathy of the left foot. He advised that appellant was totally disabled for the period December 21, 2017 through March 5, 2018. In a prescription dated January 25, 2018, Dr. Billing noted that appellant was disabled from December 21, 2017 through February 12, 2018 due to her plantar fasciitis tear. He ordered post-cast rehabilitation for four weeks in an additional prescription of the same date. In reports dated January 30, February 14, and March 19, 2018, Dr. Billing reiterated that appellant was restricted to four hours of sitting work. He subsequently advised that she could work with restrictions, six hours a day.

In an additional left foot MRI scan report dated December 19, 2017, Dr. Pizzella provided impressions of persistent tear involving the medial band plantar fascia showing, intrasubstance component with resolution of the surface component, and edema/inflammation along the plantar soft tissues of the heel with no discrete hematoma. He also provided an impression of resolution of the inflammatory change/tear involving the flexor digitorum brevis muscle.

A report from appellant’s physical therapist addressed the treatment of her left foot conditions on January 30, 2018.

On June 28, 2018 appellant, through counsel, requested reconsideration of OWCP's November 9, 2017 decision.

OWCP received additional reports dated June 27, July 18, August 9 and 22, and September 5 and 19, 2018 by Dr. Billing in which he continued to note her condition was work related. In a prescription dated July 18, 2018, Dr. Billing indicated that appellant could work eight hours a day, but the last two hours of the day should be limited-duty work. Appellant's work schedule was for three months.

By decision dated September 26, 2018, OWCP denied modification of its November 9, 2017 decision.⁵

LEGAL PRECEDENT

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 he or she 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 or specific condition for which compensation is claimed is causally related to the employment 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

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁹ 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.¹⁰ 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.¹¹ The weight of medical evidence is determined by its reliability, its probative value, its convincing

⁵ By decision dated April 12, 2018, OWCP denied appellant's claim for a recurrence of disability from September 23 through October 1, 2017 causally related to her accepted May 9, 2017 employment injuries. Also, by decision dated April 13, 2018, it denied her additional claim for an employment-related recurrence of disability December 21, 2017 through January 5, 2018.

⁶ *Id.*

⁷ See *F.H.*, Docket No. 18-1238 (issued January 18, 2019); *Tracey P. Spillane*, 54 ECAB 608 (2003).

⁸ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ See *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁰ See *S.A.*, Docket No. 18-0399 (issued October 16, 2018).

¹¹ See *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional left foot conditions causally related to her accepted May 9, 2017 employment injuries.

In support of her claim, appellant submitted a series of reports from her attending physician, Dr. Billing. In attending physician's reports (Form CA-20) Dr. Billing diagnosed various left ankle and foot conditions, including plantar fasciitis tear, peroneal tendinitis, possible regional pain syndrome, and stress fracture of the fifth metatarsal of the left foot. He checked a box marked "yes" indicating that the diagnosed conditions were caused or aggravated by the accepted May 9, 2017 employment injuries. Dr. Billing also indicated that appellant was either partially or totally disabled from work on intermittent dates from June 19, 2017 through September 29, 2017. The Board has held that when a physician's opinion on causal relationship consists only of a checkmark on a form, without more by way of medical rationale, the opinion is of diminished probative value.¹³ Dr. Billing has not provided the necessary medical rationale explaining how appellant's left foot sprain caused or aggravated her diagnosed conditions and resulted in her total disability from work. Therefore, the Board finds that his reports are insufficient to establish her burden of proof.¹⁴

Similarly, Dr. Erickson's May 19, 2017 report is insufficient to establish appellant's burden of proof. He diagnosed pain in the left ankle and joints of the left foot, and plantar fascial fibromatosis. Dr. Erickson checked a box marked "yes" indicating that the accepted May 9, 2017 employment incident caused the diagnosed conditions. He reasoned that appellant's complaints were consistent with her history of injury/illness and that her history of injury/illness was consistent with his objective findings. The Board finds, however, that Dr. Erickson has not specifically identified the physical or objective findings that supported his conclusion. He did not provide adequate rationale explaining the basis of his opinion on causal relationship.¹⁵ Dr. Erickson's remaining August 21, 2017 report diagnosed rupture of the plantar fasciitis of the left foot and found that appellant was totally disabled from work from May 9 through October 30, 2017. He opined that she was injured while working as a mail carrier. While Dr. Erickson's opinion is generally supportive of causal relationship, he again did not provide

¹² *F.H.*, *supra* note 7.

¹³ *See J.L.*, Docket No. 18-0698 (issued November 5, 2018); *R.A.*, Docket No. 17-1472 (issued December 6, 2017); *Sedi L. Graham*, 57 ECAB 494 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹⁴ *See V.H.*, Docket No. 18-1282 (issued April 2, 2019).

¹⁵ *See M.B.*, Docket No. 18-0906 (issued November 21, 2018).

adequate medical rationale explaining the basis of his opinion on causal relationship.¹⁶ Thus, the Board finds that his reports are insufficient to establish appellant's burden of proof.

Similarly, Dr. Billing's duty status reports (Form CA-17) and July 27, 2017 report are insufficient to establish appellant's burden of proof. In the Form CA-17 reports, he diagnosed other specified injury of intrinsic muscle and tendon at ankle and foot level, left foot, subsequent encounter due to the accepted May 9, 2017 employment injuries. Dr. Billing initially opined that appellant was unable to perform her regular work duties and subsequently found that she could work four hours a day with restrictions. In the July 27, 2017 report, he opined that appellant's left foot injury was employment related. Dr. Billing did not explain how appellant's accepted condition of left knee sprain caused her other specified injury of intrinsic muscle and tendon at ankle and foot level, left foot, subsequent encounter and disability.¹⁷ Thus, his reports are insufficient to establish her burden of proof.¹⁸ Dr. Billing's remaining reports and prescriptions addressed appellant's left knee conditions, disability from work, and work restrictions, but did not offer a medical opinion finding that the diagnosed conditions were causally related to the accepted work injuries.¹⁹ The Board finds, therefore, that Dr. Billing's reports are insufficient to establish appellant's burden of proof.

Likewise, the reports of Dr. Cronin and Dr. Ulatowski are insufficient to establish appellant's burden of proof. The physicians diagnosed plantar fasciitis and left foot strain and addressed appellant's work restrictions, but did not provide an opinion that the diagnosed conditions and work restrictions were caused by the accepted employment injuries.²⁰

While the x-ray and MRI scan reports of Dr. Perry and Dr. Pizzella offered left knee diagnoses, the Board has held that diagnostic studies lack probative value as they do not address whether the employment injury caused any of the diagnosed conditions.²¹

Appellant also submitted reports from Ms. Kirchberger and Mr. Weeks, physician assistants, and appellant's physical therapist. This evidence has no probative because neither a physician assistant nor a physical therapist is considered a "physician" as defined under FECA.²²

¹⁶ *Id.*

¹⁷ *See P.J.*, Docket No. 17-0570 (issued October 26, 2017).

¹⁸ *V.H.*, *supra* note 14.

¹⁹ *See C.N.*, Docket No. 17-1321 (issued January 16, 2018).

²⁰ *Id.*

²¹ *See V.H.*, *supra* note 14; *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

²² 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005). *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *George H. Clark*, 56 ECAB 162 (2004) (physician assistant); *Jane A. White*, 34 ECAB 515, 518 (1983) (physical therapist).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence.²³ Appellant failed to provide reasoned medical evidence demonstrating that she sustained additional left knee conditions that were caused or aggravated by the accepted May 9, 2017 employment injuries. Accordingly, the Board finds that she has failed to meet her burden of proof to establish expansion of the accepted conditions of her claim.²⁴

On appeal counsel contends that OWCP failed to adjudicate the claim in accordance with the causation standard. He further contends that it also failed to give due deference to an attending physician's findings. However, as discussed above, appellant's physicians, included Dr. Billing, did not provide a rationalized opinion sufficient to show that appellant's diagnosed left knee conditions were causally related to the accepted employment-related injuries.²⁵

Appellant may submit new evidence or argument with a written request for reconsideration, to OWCP within one year of the Board's 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 has not met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional left foot and left knee conditions causally related to her accepted May 9, 2017 employment injuries.

²³ *Supra* note 9.

²⁴ *Supra* note 10; *J.C.*, Docket No. 18-1722 (issued April 5, 2019).

²⁵ The Board notes that on May 9, 2017 the employing establishment issued appellant a signed authorization for examination and/or treatment (Form CA-16) authorizing medical treatment. The Board has held that where an employing establishment properly executes a CA-16 form, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation which does not involve the employee directly to pay the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. §§ 10.300, 10.304; *R.W.*, Docket No. 18-0894 (issued December 4, 2018).

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 18, 2019
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