United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 18-1410**
	)	**Issued: March 21, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
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 July 13, 2018 appellant, through counsel, filed a timely appeal from a February 1, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 right foot and ankle injury causally related to the accepted December 22, 2015 employment incident.

[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] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 22, 2015 appellant, then a 57-year-old automation clerk, filed a traumatic injury claim (Form CA-1) alleging that at 5:20 p.m. on that date while feeding mail into a sorting machine, she turned to pick up a tray, lost her footing, and injured her right ankle while in the performance of duty. Her supervisor indicated that the claimed incident was employment related.

In support of her claim, appellant provided a work slip dated December 23, 2015 by Dr. Suzanne H. Shenk, an attending osteopathic physician Board-certified in internal medicine, holding appellant off work from December 23 through 30, 2015 due to Achilles tendinitis with a possible tendon rupture. She also submitted hospital emergency department discharge instructions dated December 24, 2015 with a diagnosis of Achilles tendinitis.

By development letter dated January 7, 2016, OWCP advised appellant of the type of medical and factual evidence needed to establish her claim, including a detailed description of the December 22, 2015 employment incident specifying what she was doing at the time the injury occurred, and a narrative report from her physician explaining how and why that event would cause the claimed injury. It afforded her 30 days to submit the necessary evidence.

In response, appellant provided her January 22, 2016 statement asserting that, on December 22, 2015, she turned to lift a 30-pound mail tray from a "knocker stack" and experienced the onset of sudden, severe pain in the back of her right ankle and heel. She was unable to walk. Appellant noted that the cushioned floor mat on which she was standing at the time of the incident was worn and should be replaced. Two coworkers alerted her supervisor, who paged a medical response team who transported appellant from the workroom floor in a wheelchair.

In a report dated January 6, 2016, Dr. Gerald M. Vernon, an attending osteopathic physician Board-certified in family practice, noted that, while at work on December 22, 2015, appellant "was holding a package and turned and twisted on her right leg and felt a sudden sharp pain" at the top of her right heel and back of the calf. Appellant was treated at a hospital emergency room and prescribed a walking shoe, splint, and crutches. On examination, Dr. Vernon noted tenderness to palpation of the right Achilles tendon, swelling, and pedal edema. He diagnosed a possible Achilles tendon tear *versus* a ruptured plantaris tendon. In an accompanying duty status report (Form CA-17) dated January 6, 2016, Dr. Vernon diagnosed a ruptured right plantaris tendon *versus* Achilles tendon tear. He held appellant off from work through February 6, 2016.

In part B of an authorization for examination and/or treatment request (Form CA-16), attending physician's report, dated February 3, 2016, Dr. Vernon diagnosed right Achilles tendinitis with edema. He held appellant off work.

By decision dated February 10, 2016, OWCP accepted that the December 22, 2016 employment incident occurred as alleged, but denied the claim as the medical evidence of record contained insufficient medical rationale to support a causal relationship between that incident and the diagnosed tendon rupture. It concluded, therefore, that appellant had not met the requirements to establish the she sustained an injury as defined by FECA.

On December 14, 2016 appellant requested reconsideration and submitted additional medical evidence.

In a report dated March 1, 2016, Dr. Vernon opined that a magnetic resonance imaging (MRI) study performed on February 24, 2016 demonstrated Achilles tendinosis with marrow edema of the calcaneus, and an interstitial Achilles tendon tear with hyperemia. In a follow-up report dated March 15, 2016, he diagnosed a right foot and ankle sprain, right Achilles tendon strain, and tendinosis of the Achilles tendon with a possible interstitial tear.

Dr. Vernon opined in a report dated September 20, 2016 that the December 22, 2015 employment incident "resulted in injuries to her right ankle and Achilles tendon." He noted that the diagnostic and clinical findings were consistent with appellant's account of the December 22, 2015 employment incident. An August 2016 MRI scan demonstrated "Haglund's disease, which is caused by trauma to the Achilles tendon, which is what [appellant] suffered, based on the description of her injury." Dr. Vernon indicated that "the right ankle and Achilles injury are a direct result of the incident that occurred on December 22, 2015." The "diagnostic testing, clinical complaints, statement of how the incident occurred, and the mechanism of injury are all consistent with the injuries sustained on December 22, 2015."[3]

In a report dated November 3, 2016, Dr. Warren B. Mangel, an attending podiatrist, noted a history of injury and treatment. He observed that appellant's right left as 3/8 of an inch shorter than her left leg. Dr. Mangel opined that "damage to the right Achilles tendon at the insertion in the posterior aspect of the right heel and subsequent chronic pain [was] directly related" to the December 22, 2015 employment incident. He explained that the "split in the posterior calcaneal spur" demonstrated by imaging studies was "the likely cause of her sudden onset of right heel pain while at work" on December 22, 2015. Dr. Mangel recommended surgical tenolysis of the Achilles tendon.[4]

By decision dated March 14, 2017, OWCP denied modification, finding that the medical evidence of record submitted in support of the December 14, 2016 reconsideration request contained insufficient medical rationale to meet appellant's burden of proof to establish causal relationship.

On September 20, 2017 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a report dated September 15, 2017, Dr. Mangel opined that on December 22, 2015 when appellant "twisted her body around to reach for another tray of mail, the non-skid pad" would have kept appellant's right foot pointed forward. "The torsional force of her body on the right foot, increased the strain on the largest tendon of the body, the Achilles tendon at its insertion on the back of the calcaneus, with such force that it split the retrocalcaneal spur which in effect is a form of fracture of the calcaneus." Appellant subsequently developed a nonunion of the retrocalcaneal spur. "In this case, the torsional force of her body was the primary cause of the injury, subsequent chronic pain, and disability."

[3] Appellant participated in physical therapy treatments in October 2016.

[4] Appellant also submitted December 24, 2015 x-ray reports of right foot and ankle studies which demonstrated plantar and dorsal calcaneal enthesophytes, a moderate dorsal calcaneal enthesophyte, and an irregularity at the base of the fifth metatarsal.

In a report dated October 17, 2017, Dr. Thomas Obade, a Board-certified orthopedic surgeon, reviewed a history of the claimed December 22, 2015 employment injury and treatment. He opined that the "mechanism of injury with attention upon the Achilles tendon that was in close proximity to the exotosis of the os calcis caused irritation of the Achilles tendon" with fluid demonstrated by MRI scan indicative of an acute injury.

By decision dated February 1, 2018, OWCP denied modification, finding that the additional medical evidence submitted on reconsideration contained insufficient medical rationale to establish causal relationship between the accepted December 22, 2015 employment incident and the diagnosed right foot and ankle conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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, 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.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[7]

In order to determine whether an employee sustained a traumatic 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 is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[9]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[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 employee.[11] Neither the mere fact that a disease or condition manifests itself during a period of employment,

[5] *Supra* note 2.

[6] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[7] *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[8] *R.E.*, Docket No. 17-0547 (issued November 13, 2018); *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

[9] *R.E.*, *id*.

[10] *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[11] *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[12]

ANALYSIS

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

In support of her claim, appellant submitted medical evidence, including a September 20, 2016 report from Dr. Vernon, wherein he explained that her clinical findings and imaging studies supported a traumatic injury to the right Achilles tendon that conformed to appellant's account of the accepted December 22, 2015 employment incident. Dr. Vernon explained that an August 2016 MRI scan demonstrated "Haglund's disease, which is caused by trauma to the Achilles tendon, which is what [appellant] suffered, based on the description of her injury."

Appellant also provided reports from Dr. Mangel. In a report dated November 3, 2016, Dr. Mangel opined that twisting at work on December 22, 2015 split a right posterior calcaneal spur which caught and injured the right Achilles tendon. In a report dated September 15, 2017, he added that the cushioned standing mat prevented appellant's right foot from moving, and the resultant torsional force split the retrocalcaneal spur. Dr. Mangel explained that, "The torsional force of her body on the right foot, increased the strain on the largest tendon of the body, the Achilles tendon at its insertion on the back of the calcaneus, with such force that it split the retrocalcaneal spur which in effect is a form of fracture of the calcaneus." He concluded that appellant subsequently developed a nonunion of the retrocalcaneal spur, which "was the primary cause of the injury, subsequent chronic pain, and disability."

Dr. Vernon and Dr. Mangel provided affirmative opinions on causal relationship. They accurately identified specific employment factors which appellant claimed caused her condition identified findings on examination, and the mechanism of injury.

The Board notes that, while none of the reports of appellant's attending physicians is completely rationalized, they are consistent in indicating that she sustained an employment-related right foot and ankle condition and are not contradicted by any substantial medical or factual evidence of record. While the reports are insufficient to meet her burden of proof to establish her claim, they raise an uncontroverted inference between her right foot and ankle condition and the identified employment factors and are sufficient to require OWCP to further develop the medical evidence and the case record.[13]

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[14] OWCP has

[12] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[13] *D.W.*, Docket No. 17-1884 (issued November 8, 2018). *See S.S.*, Docket No. 17-0322 (issued June 26, 2018); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *A.F.*, Docket No. 15-1687 (issued June 9, 2016). *See also John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

[14] *D.W., id. See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978).

an obligation to see that justice is done.[15] The case shall, therefore, be remanded to OWCP. On remand it shall refer appellant, a statement of accepted facts and the medical evidence of record to an appropriate specialist for an examination, diagnosis, and a rationalized opinion as to whether she sustained an employment-related occupational condition of the right foot and ankle. After this and other such further development deemed necessary, OWCP shall issue a *de novo* decision.[16]

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: March 21, 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

[15] *D.W.*, *supra* note 13, *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

[16] The Board notes that the record contains a Part B of a Form CA-16 Authorization for Medical Treatment completed by Dr. Vernon on February 3, 2016. Part A, the employing establishment's section of the form, is not of record. The Board notes, however, that a properly completed CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018), *Tracy P. Spillane*, 54 ECAB 608 (2003).