United States Department of Labor
Employees' Compensation Appeals Board

K.P., Appellant	)	
and	)	**Docket No. 18-0041**
	)	**Issued: May 24, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Lakewood, NJ, Employer	)	

Appearances:
Kenneth Palmer, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 5, 2017 appellant, through counsel, filed a timely appeal from an April 11, 2017 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.[3]

[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.*

[3] Together with her appeal, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). By order dated February 16, 2018, the Board exercised its discretion and denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 18-1528 (issued December 6, 2018).

ISSUE

The issue is whether appellant has met her burden of proof to establish a right ankle condition causally related to the accepted October 15, 2015 employment incident.

FACTUAL HISTORY

On October 15, 2015 appellant, then a 38-year-old city mail carrier, filed a traumatic injury claim[4] alleging that, on that date, she injured her right ankle when it gave way when she was walking along a sidewalk while in the performance of duty. In a statement dated October 15, 2015, she explained that her ankle gave way on a sidewalk and she fell to the ground. It took appellant approximately two minutes to get back up. She further explained that she heard her ankle pop once and felt a shooting pain up her leg, before she walked back to her truck.

In a development letter dated October 22, 2015, OWCP informed appellant that she had not submitted sufficient factual or medical evidence to establish her claim, as she had not provided any documentation apart from her claim form. It requested that she submit additional evidence and respond to an attached questionnaire. On the same date OWCP requested that the employing establishment respond to a development letter regarding whether appellant was in the performance of duty at the time of the claimed incident. It afforded 30 days for responses.

A duty status report (Form CA-17) with an illegible signature from a medical care provider noted the diagnosis of an ankle sprain and released appellant to return to work on October 19, 2015 if provided desk duty. A walking boot was also prescribed for a foot and ankle injury.

On October 27, 2015 OWCP received a properly executed authorization for examination and/or treatment (Form CA-16) completed by the employing establishment on October 15, 2015.

In a diagnostic report dated October 15, 2015, Dr. Alex Langman, a Board-certified diagnostic radiologist, interpreted the results of x-rays of appellant's right ankle. He noted no acute fracture or dislocation.

In an emergency department report dated October 15, 2015, Dr. John Minetti, an emergency medical specialist, noted appellant's history of injury and reported swelling of the right ankle with tenderness of the lateral malleolus and limited range of motion secondary to pain. He diagnosed an ankle sprain.

In a report dated October 19, 2015, Dr. Tanisha Taylor, Board-certified in occupational medicine, noted the history of an employment injury and diagnosed an ankle sprain. She noted a normal x-ray study and referred appellant to an orthopedist.

On October 27, 2015 Dr. Roshni Gandhi, a podiatric surgeon, diagnosed a stress fracture of the right ankle, nondisplaced fracture of the anterior process of the calcaneus, right foot and leg pain, right Achilles bursitis, right peroneal tendinosis, synovitis and tenosynovitis of the right lower leg, synovitis of the right ankle, a right Achilles rupture, a sprain of the calcaneofibular

[4] The Board notes that appellant filed her claim on a continuation of pay/compensation form (Form CA-7).

ligament of the right ankle, and a sprain of the anterior talofibular ligament of the right ankle. On examination of x-rays, she noted a chip fracture along the anterior process of the calcaneus and soft tissue edema of the lateral right foot and ankle. On physical examination, Dr. Gandhi noted pain with palpation along the anterior talofibular ligament, the calcaneofibular ligament, and the posterior talofibular ligament, along with pain along the lateral foot along the calcaneocuboid joint and extensor digitorum brevis muscle belly. She further noted pain with palpation and compression of the distal fibula and peroneal tendons, with inversion and plantarflexion of the ankle as well as dorsiflexion and eversion, and along the insertion of the Achilles tendon. Dr. Gandhi noted that appellant reported that she had injured her right ankle in the past.

In a note dated October 28, 2015, Dr. Gandhi excused appellant from work until November 10, 2015. In a report dated November 10, 2015, she reiterated her findings from her initial report and explained that appellant should be placed in a fiberglass cast and she ordered a magnetic resonance imaging (MRI) scan of the right ankle. In an undated attending physician's report (Form CA-20), Dr. Gandhi noted that appellant was totally disabled from work commencing October 27, 2015.

In an undated statement received on November 10, 2015, appellant responded to OWCP's inquiries. She explained that, on October 15, 2015 at approximately 2:10 p.m., she was delivering mail to an address on her regularly assigned route. Appellant took two steps on the sidewalk after coming off a stoop when she heard and felt a "pop" in her right ankle. Her right ankle rolled outwards causing immediate pain to shoot up her shin and calf. Appellant fell on the ground landing on her hands and knees. She explained that as a result of the fall she had two abrasions on her left knee and she was unable to get up off the ground for a few minutes due to the pain in her ankle. Appellant slowly got off the ground and hobbled to her last two stops, then to her mail truck. She recalled that the sidewalk was clear and it was a warm, sunny day.

By letter dated November 10, 2015, the employing establishment controverted appellant's claim. A supervisor, D.C., stated that she had been working with a personal trainer for several months, and that he believed that this caused her ankle to weaken. He noted that appellant suffered nearly the same injury at the same time the previous year and that she had been offered a modified position which she refused, that there were no obstacles on-site that would have caused her injury, and that she exhibited an undesirable attitude towards her work and coworkers.

By decision dated November 30, 2015, OWCP denied appellant's claim, finding that she had not submitted sufficient medical evidence to establish causal relationship between her diagnosed conditions and the accepted employment incident of October 15, 2015. It noted in its decision that Dr. Gandhi had reported prior injuries to appellant's right ankle in her report of October 27, 2015, but that appellant had not differentiated the claimed injury from symptoms of her preexisting right ankle injuries.

In a reports dated November 30 and December 14, 2015 Dr. Megan Lubin, Board-certified in foot surgery and reconstructive rear foot and ankle surgery, examined the MRI scan of appellant's right ankle and noted a calcaneofibular ligament tear. She diagnosed right peroneal tendinosis; sprain of the calcaneofibular ligament of the right ankle, sprain of other ligament of the right ankle; a calcaneonavicular bar; localized edema; spontaneous rupture of the flexor tendons;

and a muscle/tendon strain of the peroneal muscle group at the lower level of the right leg. Dr. Lubin noted that appellant reported that she fell at work on October 15, 2015 rolling her ankle.

On December 29, 2015 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a duty status report (Form CA-17), completed by a foot and ankle surgeon with an illegible signature, appellant was provided work restrictions and kept off work.

In a report dated January 4, 2016, Dr. Lubin reiterated her prior diagnoses and noted that appellant continued to be symptomatic in her right ankle due to the injury she had sustained at work. Appellant informed Dr. Lubin that while wearing a therapeutic boot her pain was fairly well controlled, but that she still had limited motion and difficulty with movement.

In a letter dated January 29, 2016, Dr. Lubin noted the history of appellant's employment incident involving her right ankle as well as her medical treatment provided up to that date. She noted that appellant had been referred to her for surgical consultation by Dr. Gandhi following a right ankle MRI scan. Dr. Lubin noted that appellant had a prior right ankle injury which had resolved and that she had returned to full-duty employment. She opined that her right foot and ankle conditions were causally related to the October 15, 2015 accident that occurred during her work-related job duties as a mail carrier. Dr. Lubin noted that at appellant's first medical appointment following her injury she exhibited new bruising and swelling which tends to occur with a new injury and that those symptoms subsided with treatment. She noted that appellant's treatment plan was directly related to the October 15, 2015 incident.

In reports dated February 4 and March 6, 2016, Dr. Lubin noted that, while appellant reported mild improvement with range of motion, her pain level was unchanged. Appellant continued to wear the therapeutic boot when leaving the house, and an ankle stabilizer brace at home. Dr. Lubin reiterated her prior diagnoses and noted that appellant reported right ankle pain following trauma that occurred while at work.

During the hearing held on April 6, 2016, counsel explained that appellant had twisted her ankle after completing the delivery of mail to a customer's home and that this injury was a distinct and new injury as the injury to her ankle that occurred a year prior had resolved. Appellant testified that as of October 15, 2015 she was not undergoing treatment for the prior injury.

In a report dated April 15, 2016, Dr. Lubin noted that overall, appellant's ankle conditions were relatively unchanged with mild improvement in range of motion and strength. She recommended that appellant refrain from work. Dr. Lubin noted that appellant reported that her pain had been present subsequent to rolling her ankle during a work injury.

In a letter dated April 20, 2016, Dr. Lubin provided additional statements regarding the cause of appellant's diagnosed right foot and ankle conditions. She explained, "When a patient described rolling or twisting of the ankle, the most common associated diagnosis is ankle sprain. An ankle sprain is defined as torn or ruptured ligaments, whether partially or completely." Dr. Lubin noted that appellant had symptoms and diagnoses that were consistent with an inversion injury, or rolling of the ankle, which was what had occurred at work on October 15, 2015. She opined to a reasonable degree of medical certainty that the findings on examination correlate

directly with the patient's reported injury. Dr. Lubin explained that appellant heard and felt a pop when she rolled her ankle, which was one common finding with lateral ankle ligament tears and peroneal tendon ruptures. She noted that the twisting and rolling motion with an associated popping sound is commonly described by patients sustaining her diagnoses. Dr. Lubin further noted that the MRI scan confirmed swelling about the peroneal tendons, as well as a complete tear of the calcaneofibular ligament and a peroneal tendon retinacular injury. She noted that appellant's immediate presentation of swelling, exquisite pain, and guarding with range of motion on the initial office examination supported a new, acute injury that likely occurred at work. Dr. Lubin indicated that appellant had been seen three months prior to this new injury, and that on examination on July 6, 2015 there was no reported pain with range of motion and she exhibited normal strength in the right ankle. She attached a journal review article regarding lateral and syndesmotic ankle sprain injuries. Dr. Lubin concluded, "The history, clinical examination, radiographs, and MRI [scans] all support a lateral ankle inversion injury with tearing of the calcaneofibular ligament attenuation and peroneal retinaculum tear. It is undeniable that an acute inversion injury did occur, which directly correlates with [appellant's] report of twisting or rolling the ankle while delivering the mail on October 15, 2015."

By decision dated May 18, 2016, OWCP's hearing representative affirmed OWCP's November 30, 2015 decision. In reports dated May 23, June 27, and August 12, 2016, Dr. Lubin reported that appellant's pain was unchanged, but that she reported improvement with movement of the right ankle and with ambulation.

In a report dated July 14, 2016, Dr. Cary Skolnick, a Board-certified orthopedic surgeon, noted his examination of appellant and that she had injured her right ankle at work when it rolled after stepping off a stool on October 15, 2015. He examined her, finding symptoms of swelling, tenderness, and pain with eversion against resistance. Dr. Skolnick diagnosed a right lateral ligamentous complex tear, right ankle instability, and right chronic peroneal tendinitis. He concluded, "With a reasonable degree of medical probability, it is my professional opinion that the injuries noted and treatment received and reasonable and necessary and directly and causally related to the accident noted above. [. . .] These injuries have produced demonstrable medical evidence, of an objective nature, of restriction in the function, and in the material lessening, of [appellant's] working ability. These injuries have also produced an interference with [appellant's] ability to fully perform activities of daily life."

On October 27, 2016 appellant, through counsel, requested reconsideration. Counsel submitted a brief in support of the claim.

By decision dated April 11, 2017, OWCP denied modification of the May 18, 2016 decision. It found that appellant had not submitted medical evidence sufficient to establish that the accepted employment incident was "so superbly competent as to cause a tear in [appellant's] ankle."

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,[5] that an injury was sustained in the performance of duty as alleged, and that any disability or medical 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 upon a traumatic injury or an occupational disease.[7]

To determine if 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[8] The second component is whether the employment incident caused a personal injury. An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the 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 supporting such causal relationship.[10] Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[11] 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.[12] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[13]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation,

[5] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *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).

[8] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[10] *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[11] *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[12] *L.D., id.; see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[13] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[14]

ANALYSIS

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

In support of her claim, appellant submitted a series of medical reports and opinion letters from Dr. Lubin, her attending foot surgeon, including an April 20, 2016 letter. In this opinion letter, Dr. Lubin accurately described the accepted mechanism of the accepted October 15, 2015 employment injury. She concluded that appellant's diagnosed conditions resulted from a rolling motion of her right ankle while on duty working as a mail carrier. Dr. Lubin explained that a rolling or twisting of the ankle was the most common mechanism noted for an ankle sprain, which is defined as torn or ruptured ligaments, whether partially or completely. She noted that appellant had symptoms and diagnoses consistent with "an inversion injury," or rolling of the ankle. Dr. Lubin explained that appellant heard and felt a pop when she rolled her ankle, which was one common finding with lateral ankle ligament tears and peroneal tendon ruptures. She noted that the twisting and rolling motion with an associated popping sound is also consistent with the diagnosed conditions. Dr. Lubin explained that the MRI scan confirmed swelling about the peroneal tendons, as well as a complete tear of the calcaneofibular ligament, and a peroneal tendon retinacular injury. She noted that appellant's immediate presentation of swelling, bruising, exquisite pain, and guarding with range of motion on the initial office examination supported a new, acute injury that had occurred at work.

In her opinion letter, Dr. Lubin acknowledged that appellant had a prior injury to her right ankle, but that she had been seen three months prior to this new injury, and that on examination on July 6, 2015 there was no pain with range of motion and normal strength in the right ankle. She attached a journal review article regarding lateral and syndesmotic ankle sprain injuries. Dr. Lubin concluded, "The history, clinical examination, radiographs, and MRI [scans] all support a lateral ankle inversion injury with tearing of the calcaneofibular ligament attenuation and peroneal retinaculum tear. It is undeniable that an acute inversion injury did occur, which directly correlates with [appellant's] report of twisting or rolling the ankle while delivering the mail on October 15, 2015."

The Board finds that, although Dr. Lubin's report does not contain rationale sufficient to completely discharge appellant's burden of proof, her report constitutes substantial, uncontradicted evidence in support of appellant's claim and provides sufficient rationale to require further development of the case record by OWCP.[15] Dr. Lubin provided a detailed history of injury, explained and differentiated the diagnosed conditions' possible relationship to a prior right ankle injury, referenced objective medical reports demonstrating injury, expressed her opinion on causal relationship within a reasonable degree of medical certainty, provided a detailed pathophysiologic

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[15] *G.C.*, Docket No. 16-0666 (issued March 17, 2017); *M.K.*, Docket No. 17-1140 (issued October 18, 2017); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978); *see also E.J.*, Docket No. 09-1481 (issued February 19, 2010).

explanation as to the mechanism by which a rolled ankle would result in appellant's diagnosed conditions, and provided an article from a medical journal to support her biomechanical explanation. While OWCP found that her report did not contain an explanation specifically explaining how appellant's walking on a sidewalk could result in a rolled ankle, and thus appellant's diagnosed conditions, the Board finds such rationale is unnecessary as OWCP has accepted that she had sustained the employment incident as alleged.

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 the responsibility in the development of the evidence to see that justice is done.[16]

On remand OWCP should refer appellant, the case record, and a statement of facts to an appropriate specialist for an evaluation and a rationalized medical opinion on whether the accepted employment incident of rolling her ankle on a sidewalk while walking caused, contributed to, or aggravated her diagnosed right ankle medical conditions. After such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.[17]

[16] *D.G.*, Docket No. 15-0702 (issued August 27, 2015); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

[17] The Board notes that when the employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 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); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: May 24, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board