

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

_____)	
L.M., Appellant)	
)	
and)	Docket No. 18-0256
)	Issued: May 28, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Elgin, IL, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 16, 2017 appellant, through counsel, filed a timely appeal from an October 6, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 right foot conditions causally related to the accepted April 14, 2017 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 May 1, 2017 appellant, then a 53-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that she injured her right foot on April 14, 2017 when delivering mail while in the performance of duty. She stated that she was walking on grass and stepped into a hole. Appellant indicated that she felt some pain, but she continued working. On the reverse side of the claim form, the employing establishment indicated that she had stopped work on May 1, 2017. It also contended that, while appellant had informed her supervisor that she woke up with a swollen foot, she never reported that the condition was work related.

In a May 1, 2017 excuse slip, Dr. Ronald J. Leib, a podiatric surgeon, advised that he had seen appellant that day and she was unable to return to work due to a right foot injury. He excused appellant from work for two weeks.

In a May 16, 2017 development letter, OWCP advised appellant of the deficiencies of her claim and informed her of the factual and medical evidence necessary to establish her claim. It specifically requested that she provide a narrative report from a qualified physician that included a medical diagnosis and a well-rationalized opinion on causal relationship. OWCP afforded appellant 30 days to provide the requested information.

A May 26, 2017 right foot magnetic resonance imaging (MRI) scan noted a diagnosis of flexor tenosynovitis, second toe at the level of the proximal interphalangeal joint to the distal insertion. The report noted that appellant stubbed her toe on April 14, 2017, and the following day had swelling and increased pain.

By decision dated June 23, 2017, OWCP accepted that the April 14, 2017 employment incident occurred, as alleged. However, it denied appellant's claim finding that the medical evidence of record failed to establish causal relationship between appellant's diagnosed condition and the accepted employment incident.

On July 10, 2017 appellant requested reconsideration.

In a May 1, 2017 report, Dr. Leib noted a history of injury on April 14, 2017 when appellant was walking on grass while working and stepped in a hole, causing the front of her right foot to bend forward. At the time, appellant reported pain in her second toe, the top of her right foot, and the ball of her foot. The next morning, her toe was swollen and painful. Dr. Leib diagnosed right foot tenosynovitis, right foot metatarsal stress fracture, right toe and foot pain, and left foot posterior tibial tendon dysfunction.

In a July 5, 2017 note, Dr. Leib reiterated that appellant stated that she had stepped in a hole while walking her mail route, causing her injury. He explained that her second toe was hyperextended up in the air which caused the ligament supporting the bottom of the second metatarsophalangeal joint to tear completely.³ Dr. Leib found that this was confirmed by a right foot MRI scan as a plantar plate tear. He opined that the mechanics of the injury definitely caused the plantar plate tear, which can be confirmed in orthopedic literature. Dr. Leib indicated that if

³ The May 26, 2017 right foot MRI scan revealed a complete tear of the second toe plantar plate.

appellant continued to perform her job with this injury she risked further damage to the joint and metatarsal stress fracture.

By decision dated October 6, 2017, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 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.⁸ 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.⁹ The second component is whether the employment incident caused a personal injury.¹⁰ 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.¹¹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹² A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹³ Additionally, the physician's opinion must be

⁴ *Id.*

⁵ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *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 *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁹ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹² *E.M.*, *supra* note 8; *Robert G. Morris*, 48 ECAB 238 (1996).

¹³ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹⁴

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish right foot conditions causally related to the accepted April 14, 2017 employment incident.

In support of her claim appellant submitted treatment notes from her attending physician, Dr. Leib. In his May 1, 2017 report, Dr. Leib diagnosed right foot tenosynovitis, right foot metatarsal stress fracture, and right toe and foot pain. Other than noting appellant's description of the April 14, 2017 employment incident, he did not initially offer an opinion on causal relationship. However, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁵

In his July 5, 2017 note, Dr. Leib reiterated appellant's description of the April 14, 2017 employment incident, noting she had stated that she stepped in a hole while doing her mail route, causing this injury. He explained that appellant's second toe was hyperextended up in the air which caused the ligament supporting the bottom of the second metatarsophalangeal joint to tear completely. Dr. Leib found that this was confirmed by a right foot MRI scan as a plantar plate tear. He opined that the mechanics of the injury definitely caused the plantar plate tear, which can be confirmed in orthopedic literature. Although Dr. Leib noted that appellant sustained an injury on April 14, 2017 during work-related activities, such generalized statements do not establish causal relationship because they merely repeat the claimant's allegations and are unsupported by adequate medical rationale explaining how her physical activity actually caused the diagnosed conditions.¹⁶ He failed to explain how it was possible for appellant's employment incident would cause her second toe being "hyperextended up in the air." Dr. Leib did not otherwise sufficiently explain why diagnostic testing and examination findings led him to conclude that the accepted April 14, 2017 employment incident caused or contributed to the diagnosed right foot conditions. A physician's opinion must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹⁷ For these reasons, Dr. Leib's July 5, 2017 opinion is insufficient to meet appellant's burden of proof with respect to causal relationship.

Appellant also submitted diagnostic test results. The MRI scan of the right foot dated May 26, 2017 confirmed the diagnosis of complete tear plantar plate second toe and tenosynovitis. However, the diagnostic study does not address the etiology of appellant's right foot conditions.

¹⁴ *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁵ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ *See K.W.*, 59 ECAB 271, 279 (2007).

¹⁷ *Victor J. Woodhams*, *supra* note 14.

The Board has held that diagnostic studies lack probative value as they do not provide an opinion on causal relationship between appellant's employment incident and a diagnosed condition.¹⁸

As appellant has not submitted rationalized medical evidence to support her claim that she sustained a right foot injury causally related to the accepted April 14, 2017 employment incident, she has not met her burden of proof to establish entitlement to compensation benefits.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this 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 right foot conditions causally related to the accepted April 14, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 6, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 28, 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

¹⁸ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).