

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

C.T., Appellant)	
)	
and)	Docket No. 18-0257
)	Issued: May 21, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Evanston, 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 a September 18, 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.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 The Board notes that, following the September 18, 2017 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 additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish permanent impairment of her left lower extremity due to her accepted left ankle sprain; and (2) whether appellant has established that the acceptance of her claim should be expanded to include additional left lower extremity conditions, causally related to the accepted March 19, 2014 employment injury.

FACTUAL HISTORY

On March 19, 2014 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on March 19, 2014, she injured her left ankle in the performance of duty. She stated that, while walking across a lawn, she stumbled over brick pavement and twisted her ankle. Appellant continued to work following the March 19, 2014 incident, but in a limited-duty capacity. On April 30, 2014 OWCP accepted her claim for left ankle sprain.

On May 3, 2014 appellant stopped work and filed claims for wage-loss compensation (Form CA-7) alleging that no work was available within her restrictions. OWCP paid wage-loss compensation on the supplemental rolls until she returned to full-time modified-duty work on August 11, 2014. Appellant continued to receive medical treatment.

A May 29, 2014 left ankle magnetic resonance imaging (MRI) scan revealed sequelae of partial thickness tear of the anterior talofibular (ATF) ligament, mild tendinosis of the posterior tibial tendon, and small areas of bone marrow edema in the intermediate and lateral cuneiform bones. The scan was negative for Achilles tendon tear.

In a July 2014 report, Dr. Harold T. Pye, an occupational medicine specialist, related that on March 19, 2014 appellant injured her left ankle after she tripped over a concrete barrier while delivering mail. He indicated that her condition slowly improved with conservative medical management, but she continued to complain of persistent left ankle pain. Dr. Pye noted that a left ankle MRI scan showed a partial thickness tear of the ATF ligament and tendinosis of the posterior tibialis tendon. He reported diagnoses of left ankle sprain, left posterior tendon tendinitis, left ATF ligament tear, mid-foot sprain, mid-foot contusion, thoracolumbar sprain, and left knee strain.⁴

On September 8, 2016 appellant filed a claim for a schedule award (Form CA-7).

By letter dated September 20, 2016, OWCP requested that appellant provide an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁵ It afforded her 30 days to submit the requested information.

⁴ Dr. Pye initially examined appellant on March 21, 2014. At the time, he identified a March 19, 2014 date of injury when appellant slipped on a wet, uneven surface while delivering mail. Appellant lost her balance and twisted her left knee, foot/ankle, and back. In an April 1, 2014 follow-up examination, Dr. Pye's diagnoses included thoracolumbar sprain, mid-foot sprain, and medial/lateral ankle sprain. He attributed appellant's diagnoses to her employment activity, noting that she stated she was "asymptomatic prior to injury."

⁵ A.M.A., *Guides* (6th ed. 2009).

By letter dated November 9, 2016, appellant, through counsel, requested that OWCP expand the acceptance of her claim. Counsel indicated that he was submitting supporting medical documentation from Dr. Michael Smith, a Board-certified diagnostic radiologist, to show additional conditions of sequelae of partial thickness tear of the ATF ligament, mild tendinosis of the posterior tibial tendon, and small areas of bone marrow edema in the intermediate and lateral cuneiform bones.

A February 23, 2016 left knee x-ray showed no acute abnormality and normal patellar spurring. A similarly dated left knee MRI scan revealed patellar chondromalacia and a small joint effusion, but was otherwise normal.

By decision dated December 6, 2016, OWCP denied appellant's schedule award claim, finding that she had not submitted sufficient evidence to establish permanent impairment of a scheduled member or function of the body. It noted that she did not submit any evidence showing measurable permanent impairment due to the accepted March 19, 2014 employment injury.

By letter dated December 13, 2016, appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on June 15, 2017.

Post-hearing, counsel resubmitted the November 9, 2016 letter requesting to expand the acceptance of appellant's claim to include additional lower extremity conditions. He also resubmitted appellant's May 9, 2014 and February 23, 2016 diagnostic studies.

By decision dated September 18, 2017, an OWCP hearing representative affirmed the December 6, 2016 decision denying appellant's schedule award claim. She found that the medical evidence submitted did not address whether appellant sustained permanent impairment of a scheduled member or function of the body due to her accepted left ankle condition. The hearing representative further found that, while Dr. Pye diagnosed thoracolumbar sprain, left knee sprain, mid-foot sprain, and mid-foot contusion, he did not establish causal relationship between the diagnosed conditions and the accepted March 19, 2014 trip and fall.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA⁶ and its implementing federal regulations,⁷ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants.⁸ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

⁸ *Id.* at § 10.404(a).

A.M.A., *Guides*, published in 2009.⁹ The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.¹⁰

It is the claimant's burden of proof to establish permanent impairment of the scheduled member or function as a result of an employment injury.¹¹ OWCP's procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred, describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.¹²

ANALYSIS -- ISSUE 1

The Board finds that appellant has not established permanent impairment of her left lower extremity causally related to the March 19, 2014 employment injury.

Appellant submitted various left lower extremity diagnostic reports dated February 23, 2016 and May 29, 2014, which showed sequelae of a partial thickness ATF ligament tear, mild tendinosis of the posterior tibial tendon, and bone marrow edema in the intermediate and lateral cuneiform bones.

The Board finds that the medical evidence of record is insufficient to establish permanent impairment of a scheduled member or function of the body due to the accepted left ankle sprain. It is well established that before the A.M.A., *Guides* can be utilized, a description of permanent impairment must be obtained from the claimant's physician. The evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment.¹³ In this case, the May 29, 2014 and February 23, 2016 diagnostic reports do not establish that appellant's condition had reached maximum medical improvement (MMI), do not describe the impairment in sufficient detail so that it can be visualized on review, and do not compute the percentage of impairment in accordance with the A.M.A., *Guides*.¹⁴ Accordingly, the Board finds that they are insufficient to establish appellant's schedule award claim.

On appeal, counsel contends that OWCP should have ruled on the motion to expand the acceptance of appellant's claim before the schedule award application was denied. As previously

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

¹⁰ *D.S.*, Docket No. 18-1140 (issued January 29, 2019); *Isidoro Rivera*, 12 ECAB 348 (1961).

¹¹ *D.F.*, Docket No. 18-1337 (issued February 11, 2019); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹² *Supra* note 9 at Chapter 2.808.5 (March 2017).

¹³ *D.M.*, Docket No. 11-775 (issued October 11, 2011); *Peter C. Belkind*, 56 ECAB 580 (2005).

¹⁴ *Supra* note 10.

discussed, it is the claimant's burden of proof to establish permanent impairment, including, where applicable, the loss in degree of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment.¹⁵ The Board has found for the reasons set forth above that the evidence of record is insufficient to establishment entitlement to a schedule award.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

LEGAL PRECEDENT -- ISSUE 2

Where 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.¹⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁷ 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.¹⁸ Additionally, it must be 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).¹⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that the acceptance of her claim should be expanded to include partial thickness ATF ligament tear, mild tendinosis of the posterior tibial tendon, and bone marrow edema in the intermediate and lateral cuneiform bones.

In attending physician's reports (Form CA-20) dated March 21 and April 1, 2014, Dr. Pye indicated that appellant's diagnosed conditions were employment related because she had been asymptomatic prior to the March 19, 2014 employment incident. The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury, without adequate rationale, is insufficient to establish causal relationship.²⁰

In his July 2014 narrative report, Dr. Pye described the March 19, 2014 traumatic injury and related that a left ankle MRI scan showed a partial thickness tear of the ATF ligament and tendinosis of the posterior tibialis tendon. His diagnoses included left ankle sprain, left posterior

¹⁵ *Supra* note 9.

¹⁶ *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁷ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

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

¹⁹ *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

²⁰ *R.V.*, Docket No. 18-1037 (issued March 26, 2019); *M.R.*, Docket No. 14-001 (issued August 27, 2014).

tendon tendinitis, left ATF ligament tear, mid-foot sprain, mid-foot contusion, and left knee strain. Dr. Pye did not, however, provide any opinion on whether the additional left lower extremity conditions were causally related to the accepted March 19, 2014 employment injury. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.²¹

Likewise, the May 29, 2014 and February 23, 2016 left lower extremity diagnostic studies are insufficient to establish causal relationship. The Board has held that diagnostic studies lack probative value as they do not provide an opinion on causal relationship.²² For this reason, this evidence is insufficient to meet appellant's burden of proof.

Causal relationship is a medical question that must be established by probative medical opinion from a physician.²³ As appellant has not submitted such medical evidence in this case, the Board finds she has not met her burden of proof to expand the acceptance of her claim.

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 that she has permanent impairment of her left lower extremity due to her accepted left ankle sprain. The Board further finds that appellant has not established that the acceptance of her claim should be expanded to include additional left lower extremity conditions, causally related to the accepted March 19, 2014 employment injury.

²¹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

²² See *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

²³ *W.W.*, Docket No. 09-1619 (issued June 2010); *David Apgar*, 57 ECAB 137 (2005).

ORDER

IT IS HEREBY ORDERED THAT the September 18, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 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