

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

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**T.K., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Atlanta, GA, Employer**

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**Docket No. 18-1239  
Issued: May 29, 2019**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 4, 2018 appellant, through counsel, filed a timely appeal from an April 26, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the April 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 additional evidence for the first time on appeal. *Id.*

## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish total disability from work for the period April 10 to August 7, 2015, causally related to her accepted February 23, 2015 employment injury; and (2) whether appellant has established that the acceptance of her claim should be expanded to include the additional conditions of left tarsal tunnel syndrome, posterior tibial neuropathy, left ankle derangement, deltoid ligament partial tear, anterior talofibular (ATF) ligament partial tear, calcaneofibular (CFL) partial tear, and non-displaced left ankle fracture.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 26, 2015 appellant, then a 41-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on February 23, 2015, she twisted her left ankle when descending stairs while in the performance of duty. She noted that she sprained her ankle and experienced pain. Appellant stopped work on February 24, 2015 and returned on February 26, 2015.

Appellant was treated by Dr. Joseph Gregorace, Board-certified in physical medicine and rehabilitation and pain management. In an initial March 2, 2015 report, Dr. Gregorace noted that appellant worked as a letter carrier and described that, on February 23, 2015, she twisted her left ankle while descending stairs. He related appellant's complaints of worsening left ankle pain and swelling. Upon examination of appellant's left ankle, Dr. Gregorace observed tenderness along the medial aspect. Anterior Drawer and Tinel's tests were negative. Dr. Gregorace diagnosed left ankle sprain. He opined that there was "causal relation between the left ankle injury and the work-related accident from February 23, 2015." Dr. Gregorace found her totally disabled from work due to her left ankle injury.

By decision dated April 15, 2015, OWCP initially denied the claim, finding that the factual evidence of record was insufficient to establish that the February 23, 2015 incident occurred as alleged. It also determined that the medical evidence did not establish a diagnosed condition as a result of the alleged incident. OWCP concluded, therefore, that appellant had not met the requirements to establish an injury as defined by FECA.

On June 16, 2015 appellant requested reconsideration and submitted additional medical evidence.

OWCP received additional reports and work status notes from Dr. Gregorace dated February 23 to May 12, 2015. Dr. Gregorace related appellant's complaints of persistent medial left ankle pain and provided examination findings. He noted additional diagnoses of left ankle derangement with deltoid ligament partial tear, ATF partial tear, and CFL tear, left tarsal tunnel syndrome, and nondisplaced left ankle fracture. In a May 12, 2015 report, Dr. Gregorace opined

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<sup>4</sup> Docket No. 16-1543 (issued March 13, 2017).

that these traumatic injuries were a result of a work-related accident on February 23, 2015. He indicated that appellant was totally disabled from work.

By decision dated July 16, 2015, OWCP accepted appellant's claim for left ankle sprain. By a separate decision of even date, it denied her claim for the medical conditions of left tarsal tunnel syndrome, posterior tibial neuropathy, left ankle derangement, deltoid ligament partial tear, ATF ligament partial tear, CFL partial tear, and nondisplaced left ankle fracture. OWCP found that the medical evidence of record was insufficient to establish causal relationship between the additional left ankle conditions outlined by Dr. Gregorace and the February 23, 2015 employment injury.

On August 17, 2015 appellant filed a claim for wage-loss compensation (Form CA-7) for total disability for the period April 10 to August 7, 2015 as a result of her accepted injury. On the reverse side of the Form CA-7, the employing establishment indicated that she stopped work on February 24, 2015 and received continuation of pay (COP) until April 9, 2015.

In an August 28, 2015 claim development letter, OWCP requested additional medical evidence to establish that her inability to work during the claimed period was causally related to her accepted February 23, 2015 employment injury. It afforded appellant 30 days to submit the requested information.

OWCP received a duty status report (Form CA-17) and an attending physician's report (Form CA-20) dated August 25, 2015 by Dr. Gregorace. Dr. Gregorace reported clinical findings and diagnoses of left ankle fracture, ligament tears, and left tarsal tunnel syndrome. In the Form CA-20, he checked a box marked "yes" indicating that appellant's diagnosed conditions were caused or aggravated by the employment activity. Dr. Gregorace again related that appellant was totally disabled from work beginning February 23, 2015.

In a decision dated October 6, 2015, OWCP denied appellant's claim for wage-loss compensation, finding that the medical evidence of record was insufficient to establish that she was disabled from work for the period April 10 to August 7, 2015 due to her accepted February 23, 2015 left ankle sprain injury. It noted that Dr. Gregorace provided diagnoses of left ankle internal derangement, ATF ligament partial tear, CFL ligament partial tear, left tarsal tunnel syndrome, left ankle fracture, and left ankle derangement, which were found not to be accepted conditions.

On February 12, 2016 appellant, through counsel, requested reconsideration and submitted additional medical evidence in the form of a report from Dr. Gregorace dated October 6, 2015.

By decision dated May 12, 2016, OWCP denied modification of the July 16 and October 5, 2015 decisions. It found that the medical evidence of record was insufficient to establish that the February 23, 2015 employment injury caused or contributed to the additional conditions of left tarsal tunnel syndrome, posterior tibial neuropathy, left ankle derangement, deltoid ligament partial tear, ATF ligament partial tear, CFL partial tear, or left ankle fracture. OWCP further determined that, because the medical evidence attributed appellant's inability to work to those additional conditions, and not the accepted left ankle sprain condition, she had not established her claim for wage-loss compensation for the period April 10 to August 7, 2015.

Appellant subsequently appealed to the Board.

OWCP received several work status forms dated April 14 and July 9, 2015 by Dr. Gregorace. Dr. Gregorace reported a diagnosis of left ankle derangement and marked a box indicating that appellant was 100 percent disabled.

By decision dated March 13, 2017, the Board affirmed the May 12, 2016 decision. The Board determined that the evidence of record was insufficient to establish that the acceptance of appellant's claim should be expanded to include additional conditions of left tarsal tunnel syndrome, posterior tibial neuropathy, left ankle derangement, deltoid ligament partial tear, ATF ligament partial tear, calcaneofibular CFL partial tear, and nondisplaced left ankle fracture. The Board noted that the medical evidence of record failed to contain rationalized medical opinion explaining how the February 23, 2015 work injury caused or contributed to these additional left lower extremity conditions. The Board further found that the medical evidence of record was insufficient to establish that appellant was disabled from work for the period April 10 through August 7, 2015 due to the accepted February 23, 2015 left ankle sprain injury.

On January 31, 2018 appellant requested reconsideration and submitted additional medical evidence.

Appellant began to receive treatment from Dr. John J. McGee, a podiatrist. In an initial March 8, 2017 report, he described that on February 23, 2015 appellant twisted her left ankle and fell down. Dr. McGee reported examination findings of moderate distress secondary to pain and mild tenderness of the medial and lateral aspect. Range of motion was restricted. Dr. McGee diagnosed status post left ankle fracture and multi-ligament tears. He provided follow-up examination reports dated March 30 and May 22, 2017, which provided examination findings and diagnosed status post left ankle fracture with multiligament errors. Dr. McGee responded "yes" indicating that the incident described by the patient was the competent cause of the injury and that the history of injury was consistent with objective findings.

In an August 14, 2017 initial doctor's report, Dr. Marc Hilaire, an internist, described that on February 23, 2015 appellant was delivering mail when she twisted her left ankle at work. Upon examination of appellant's left ankle, he observed pain and tenderness and decreased strength. Dr. Hilaire reported diagnoses of left ankle sprain and contusion, left foot sprain and contusion, and left malleolus fracture. He checked a box marked "yes" indicating that the incident described was the medical cause of the injury. Dr. Hilaire further indicated that appellant was 100 percent disabled and could not work because of left foot pain and decreased range of motion. He completed follow-up examination reports dated August 18, 2017 to March 5, 2018 and continued to opine that appellant was 100 percent disabled due to pain, decreased range of motion, and decreased functional capacity.

Dr. Steven M. Yager, a Board-certified podiatrist related in a November 21, 2017 report appellant's complaints of pain in her left foot and ankle and diagnosed internal ankle derangement.

In a narrative report dated January 18, 2018, Dr. Gregorace related that appellant was initially examined and diagnosed with a left ankle sprain due to a February 23, 2015 traumatic injury. He indicated that appellant developed neurologic symptomatology in the medial aspect of the left ankle, which was confirmed by electrodiagnostic testing to be left tarsal tunnel syndrome (left posterior tibial neuropathy). Dr. Gregorace opined that the "stretching and twisting of the ankle not only caused soft tissue ligament injury, but also caused stretching of the peripheral nerve which is just posterior to the medial malleolus." He further explained that appellant sustained a

“stretching[-]type injury to the left posterior tibial nerve” due to the significant injury to her left ankle soft tissues. Dr. Gregorace reported that appellant also sustained ligament tears along the medial and lateral aspects of the left ankle. He opined that appellant’s left ankle sprain later evolved into ligament tears, as noted on an MRI scan.

By decision dated April 26, 2018, OWCP denied modification of the May 12, 2016 decision. It found that the medical evidence of record did not provide sufficient medical rationale explaining how her claimed disability from work for the period April 10 to August 7, 2015 was causally related to the accepted February 23, 2015 left ankle injury. OWCP also determined that the medical evidence of record was insufficient to establish that appellant sustained additional left lower extremity conditions due to the accepted work injury.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.<sup>6</sup> For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>7</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.<sup>8</sup>

Under FECA, the term “disability” means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.<sup>9</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.<sup>10</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met her burden of proof to establish total disability from work for the period April 10 to August 7, 2015 causally related to her accepted February 23, 2015 employment injury.

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>7</sup> *Dominic M. Descaled*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>8</sup> *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel A. Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

<sup>9</sup> 20 C.F.R. § 10.5(f); *see e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>10</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>11</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

In its prior decision dated March 13, 2017, the Board found that the medical evidence of record was insufficient to establish that appellant was disabled from work from April 10 to August 7, 2015 due to her accepted left ankle injury. It also determined that the medical evidence of record failed to establish that appellant sustained additional left lower extremity conditions due to the accepted February 23, 2015 work injury. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>12</sup> The Board will, therefore, not review the evidence addressed in the prior appeal.

Following the Board's March 13, 2017 decision, appellant submitted additional reports by Dr. Gregorace. In work status forms dated April 14 and July 9, 2015, Dr. Gregorace noted a diagnosis of left ankle derangement and marked a box "yes" indicating that appellant was 100 percent disabled. He did not, however, discuss any objective findings to support appellant's inability to work, nor did he explain why she was unable to work as a result of appellant's accepted left ankle sprain injury.<sup>13</sup> Instead, Dr. Gregorace noted a diagnosis of left ankle derangement, which is not an accepted condition. As he failed to attribute disability to the accepted condition of left ankle sprain, his work status notes are insufficient to meet appellant's burden of proof.<sup>14</sup>

The reports by Dr. McGee dated March 8 to May 22, 2017 and by Dr. Hilaire dated August 14, 2017 to March 5, 2018 similarly fail to establish appellant's disability claim as they postdate the claimed period of disability and otherwise do not address the claimed April 10 to August 7, 2015 period of disability.

The reports of appellant's physician do not provide a rationalized medical opinion substantiating that she was disabled from work during the claimed period of April 10 to August 7, 2015 due to her accepted left ankle sprain. Accordingly, the medical evidence submitted is insufficient to meet appellant's burden of proof.<sup>15</sup> The Board finds, therefore, that appellant has not met her burden of proof to establish her claim for disability compensation.

### **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.<sup>16</sup> To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence.<sup>17</sup> 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

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<sup>12</sup> See *H.G.*, Docket No. 16-1191 (issued November 25, 2016).

<sup>13</sup> See *M.M.*, Docket No. 16-0541 (issued April 27, 2010).

<sup>14</sup> *R.A.*, Docket No. 14-1327 (issued October 10, 2014); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>15</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>16</sup> *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, *supra* note 14.

<sup>17</sup> *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

condition and the specific employment factors identified by the claimant.<sup>18</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>19</sup>

### ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that her claim should be expanded to include left tarsal tunnel syndrome, posterior tibial neuropathy, left ankle derangement, deltoid ligament partial tear, ATF ligament partial tear, CFL partial tear, and nondisplaced left ankle fracture as causally related to the accepted February 23, 2015 employment injury.

Appellant submitted a January 18, 2018 narrative report by Dr. Gregorace describing that appellant sustained a left ankle sprain as a result of a February 23, 2015 traumatic injury. Dr. Gregorace related that electrodiagnostic testing later showed left tarsal tunnel syndrome. He explained that the "stretching and twisting of the ankle not only caused soft tissue ligament injury, but also caused stretching of the peripheral nerve which is just posterior to the medial malleolus." Dr. Gregorace further reported that appellant's left ankle sprain evolved into ligament tears along the medial and lateral aspects of the left ankle, which were confirmed with an MRI scan. Although he attributed appellant's additional left ankle and foot conditions to her accepted February 23, 2015 employment injury, Dr. Gregorace failed to provide sufficient explanation regarding the mechanism of injury of how the additional left foot and ankle conditions were causally related to the accepted February 23, 2015 employment injury.<sup>20</sup> He did not provide a description of the February 23, 2015 employment injury nor explain the pathophysiological process of how twisting her left ankle on February 23, 2015 would have caused or contributed to the additional left ankle conditions of tarsal tunnel syndrome, ATF ligament partial tear, and CFL partial ligament tear.<sup>21</sup> A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.<sup>22</sup>

In an initial March 8, 2017 report, Dr. McGee described that on February 23, 2015 appellant twisted her left ankle and fell down. He provided examination findings and diagnosed status post left ankle fracture and multiligament tears. Dr. McGee provided follow-up examination reports dated March 30 and May 22, 2017, where he responded "yes" indicating that the incident described was the competent cause of the injury and that the history of injury was consistent with objective findings. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.<sup>23</sup> Likewise, in an August 14, 2017 report, Dr. Hilaire checked a box marked "yes" indicating that the February 23, 2015 injury caused appellant's left ankle sprain and contusion, left foot sprain and

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<sup>18</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>19</sup> *See H.H.*, Docket No. 16-0897 (issued September 21, 2016); *James Mack*, 43 ECAB 321 (1991).

<sup>20</sup> *J.H.*, Docket No. 14-0775 (issued July 14, 2014).

<sup>21</sup> *See B.T.*, Docket No. 13-0138 (issued March 20, 2013).

<sup>22</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>23</sup> *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

contusion, and left malleolus fracture conditions. As he did not provide any medical rationale to support his opinion, his report is insufficient to establish additional conditions as causally related to appellant's accepted injury.

Appellant also submitted a November 21, 2017 report by Dr. Yager who noted a diagnosis of internal ankle derangement. Dr. Yager did not, however, provide any opinion on whether the left ankle condition was causally related to the accepted February 23, 2015 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.<sup>24</sup>

On appeal counsel contends that the April 26, 2018 OWCP decision is contrary to law and fact. As explained above, however, appellant has not submitted sufficient medical evidence to establish causal relationship between the diagnosed conditions of left tarsal tunnel syndrome, posterior tibial neuropathy, left ankle derangement, deltoid ligament partial tear, ATF ligament partial tear, CFL partial tear, and nondisplaced left ankle fracture and the accepted February 23, 2015 employment incident. Neither the 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.<sup>25</sup> Causal relationship is a medical question that must be established by probative medical opinion from a physician.<sup>26</sup> As appellant has not submitted such medical evidence in this case, she has not met her burden of proof to require expansion of the acceptance of her claim to include additional conditions.

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 total disability from work for the period April 10 to August 7, 2015, causally related to her accepted February 23, 2015 employment injury. The Board also finds that appellant has not established that the acceptance of her claim should be expanded to include left tarsal tunnel syndrome, posterior tibial neuropathy, left ankle derangement, deltoid ligament partial tear, ATF ligament partial tear, CFL partial tear, and nondisplaced left ankle fracture.

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<sup>24</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

<sup>25</sup> *Jennifer Atkerson*, 55 ECAB 317 (2004).

<sup>26</sup> *W.W.*, Docket No. 09-1619 (issued June 1, 2009); *David Apgar*, 57 ECAB 137 (2005).

**ORDER**

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

Issued: May 29, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy 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