United States Department of Labor
Employees' Compensation Appeals Board

M.P., Appellant	)	
and	)	**Docket No. 18-1747**
	)	**Issued: May 3, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Coppell, TX, Employer	)	

Appearances:
Appellant, pro se
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 17, 2018 appellant filed a timely appeal from a July 16, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the July 16, 2018 decision, OWCP received additional evidence and that appellant submitted additional evidence on appeal. 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability for the period August 18, 2015 through October 31, 2016 causally related to her accepted bilateral foot and ankle conditions.

FACTUAL HISTORY

On August 18, 2015 appellant, then a 48-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that standing while in the performance of duty caused injuries to both feet. She stopped work that day. On September 18, 2015 OWCP accepted the claim for bilateral plantar fibromatosis.

Appellant filed a claim for compensation (Form CA-7) for the period August 18 to September 25, 2015.

In a development letter dated October 7, 2015, OWCP informed appellant that additional medical evidence was necessary to establish her disability claim. It advised her of the type of evidence needed to establish disability and afforded her 30 days to submit the necessary evidence.

In support of her disability claim, appellant provided an August 18, 2015 initial patient evaluation from Dr. Jerry L. Franz, a specialist in occupational medicine and thoracic surgery. Dr. Franz related seeing appellant for complaints of swelling and painful feet. He noted tenderness to palpation of both feet, diagnosed bilateral plantar fasciitis, and ordered x-ray studies. On a duty status report (Form CA-17) of even date Dr. Franz advised that appellant could not work. On August 31, 2015 he noted his review of August 21, 2015 bilateral foot and ankle x-rays.[3] Dr. Franz diagnosed bilateral calcaneal spurring and bilateral foot and ankle arthritis. He reported that appellant's work duties required that she stand for long periods on concrete and uneven surfaces. Dr. Franz opined that these work duties exacerbated her foot and heel pain, noting that the underlying tissue was deformed and this contributed to her painful feet. On September 9, 2015 he noted examination findings of pain to palpation of both feet and ankles with associated painful range of motion. Dr. Franz diagnosed bilateral plantar fasciitis and noted that appellant's daily duties included constant standing on hard and uneven surfaces and lifting mail weighing up to 70 pounds, which she had done for 18 years and had resulted in the diagnosed condition. On a duty status report also dated August 31, 2015 he diagnosed bilateral heel spurs, and advised that she could not work, noting that she could not stand for greater than 15 minutes.

On September 28, 2015 Dr. Jaytinder S. Sandhu, a podiatrist, noted appellant's complaints of bilateral heel pain and reported that she was limping that day. He provided examination findings of pain with palpation of plantar medial calcaneal tubercle. Ultrasound examination demonstrated

[3] Right foot x-ray demonstrated no acute fracture or dislocation, mild-to-moderate osteoarthritis, moderate plantar and mild dorsal calcaneal bony spurring, and osteopenic-appearing bony trabeculae. Right ankle x-ray demonstrated no fracture or dislocation, mild osteoarthritis, an eight-by-eight millimeter plantar calcaneal bony spurring, and osteopenic-appearing bony trabeculae. Left foot x-ray demonstrated no acute fracture or dislocation, osteopenic-appearing bony trabeculae, and mild-to-moderate osteoarthritis of the left foot. Left ankle x-ray demonstrated no fracture or dislocation, mild osteoarthritis, and moderate dorsal and plantar calcaneal bony spurring.

abnormal thickening of the medial band of the plantar fascia. Dr. Sandhu diagnosed foot pain and chronic bilateral plantar fasciitis and recommended night splints and heel cups. In an October 26, 2015 report, he described examination findings, diagnosed chronic bilateral plantar fasciitis, recommended physical therapy, and advised that appellant could return to full duty with no restrictions.

On November 2, 2015 Dr. Franz noted that he took appellant off work until further notice, and that he referred her to Dr. Sandhu for surgical evaluation only. He related that "unfortunately, while Dr. Sandhu agreed with therapy recommendations, he arbitrarily and without jurisdiction" advised that appellant could immediately return to full duty. Dr. Franz opined that this recommendation by the specialist was not the intent of the referral and that it was contrary to his opinion that she should be off of work pending therapy. He related that he advised appellant not to return to work.

By decision dated December 3, 2015, OWCP denied appellant's claim for disability compensation beginning August 18, 2015, finding that the medical evidence of record was insufficiently rationalized to establish total disability.

On March 15, 2016 appellant requested reconsideration. She continued to submit claims for compensation (Form CA-7) for total disability.

A physical performance test dated November 4, 2015 demonstrated that appellant could perform light physical duties.

Dr. Rory Allen, an osteopath specializing in family medicine, began treating appellant on December 18, 2015. On an attending physician's report (Form CA-20) dated that day, he noted continued severe bilateral heel pain and checked a form box "yes," indicating that this condition was caused by employment. Dr. Allen also advised that appellant could not stand for greater than five minutes and that she was totally disabled. On January 15, 2016 he reported that appellant's heel pain continued and that she was attending physical therapy. Dr. Allen found tenderness to palpation in the plantar fascia region of both feet and diagnosed bilateral plantar fasciitis, bilateral calcaneal spurs, and bilateral osteoarthritis of the feet. He continued to advise that she could not work.

A physical performance examination on February 2, 2016 demonstrated that appellant could perform light-to-medium activity.

In a report dated February 22, 2016, Dr. Allen indicated that he was in agreement with Dr. Franz's opinion relative to causation, diagnosis, and treatment. He advised that appellant had shown good, but guarded progress with physical therapy, but continued to be unable to perform her job duties. Dr. Allen maintained that the medical evidence supported keeping appellant off work from August 18, 2015 to present due to the accepted severe bilateral plantar fasciitis. He indicated that she could not stand on hard surfaces and could not work in any physical capacity because she could not stand, walk, pull, crouch, lift, or perform any repetitive biomechanical movements, and because she needed to attend physical therapy. Dr. Allen noted the findings on the physical performance tests and concluded that, based on objective testing, appellant did not

have the physical capacity to return to work. On March 2, 2016 he reiterated that she was totally disabled due to bilateral plantar fasciitis and calcaneal spurs.

In correspondence dated March 9, 2016, the employing establishment controverted appellant's disability claim.

By decision dated March 30, 2016, OWCP denied modification of the prior decision. It noted that Dr. Sandhu had advised that appellant could return to full-duty work and found that the opinions of Dr. Franz and Dr. Allen contained insufficient rationale to establish total disability.

On May 19, 2016 appellant requested reconsideration. She indicated that she had been released to modified duty on April 11, 2016, but no work was available within her restrictions.

A March 15, 2016 physical performance test, ordered by Dr. Allen, demonstrated that appellant could perform light-to-medium activity.

In reports dated April 1, 2016, Dr. Allen reiterated his findings and conclusions. On April 5, 2015 he reported that appellant could return to modified duty. On May 3, 2016 Dr. Allen advised that she could continue modified duty, but on May 31, 2016 again indicated that she was totally disabled. On July 22, 2016 he indicated that appellant had noticed "much improvement" in her symptoms. Dr. Allen noted examination findings of foot tenderness, left greater than right, and diagnosed bilateral plantar fasciitis, improving slowly, and bilateral calcaneal spurs, improving slowly. He advised that appellant should be off work until September 1, 2016.

By decision dated August 17, 2016, OWCP denied modification of the March 30, 2016 decision, finding that the evidence submitted was insufficient to establish total disability for the period claimed.

Physical performance tests on July 12 and August 16, 2016 demonstrated that appellant could perform light-to-medium activity.

By report dated August 25, 2016, Dr. Allen noted that appellant had no right foot complaints and that the left foot was improving. He advised that she could not work because continued weight-bearing and walking caused further inflammation and aggravation of her condition. Dr. Allen reiterated his diagnoses and referred appellant for a consultation.

In reports dated September 1, 2016, Dr. Brian E. Straus, a Board-certified orthopedic surgeon, noted that appellant had been referred to him by Dr. Allen. He described her employment history, noting job duties that required prolonged standing, and her complaint of throbbing left foot pain, less severe on the right. Dr. Straus documented physical examination findings and reviewed x-rays.[4] He diagnosed a partial tear of the left Achilles tendon. Dr. Straus noted that appellant had failed one year of conservative treatment and continued to deal with symptoms consistent with the diagnosed Achilles tendon tear. He recommended surgical repair and advised

[4] Copies of Dr. Straus' x-ray reports are not found in the case record.

that appellant was totally disabled from work. On September 8, 2016 Dr. Straus requested authorization for surgery, which was authorized by OWCP on September 21, 2016.

Dr. Allen continued to submit reports. He noted Dr. Straus' recommendation that appellant have surgery to repair her left Achilles tendon and advised that appellant could not work.

On October 11, 2016 OWCP e-mailed the employing establishment. It noted that appellant had claimed disability beginning August 18, 2015 and inquired as to whether light-duty work was available for the period August 18, 2015 to present.

In an October 19, 2016 report, Dr. Jose G. Trevino, an occupational medicine physician, noted seeing appellant for a preoperative clearance. He noted her complaint of left foot pain, described examination findings, and cleared her for surgery.

In a report dated October 25, 2016, Dr. Allen reviewed appellant's treatment since she stopped work on August 18, 2015. He opined that she was totally disabled from work due to severe bilateral plantar fasciitis because she could not stand on hard surfaces and could barely stand for any length of time. Dr. Allen maintained that appellant had been wrongfully denied disability benefits.

On October 31, 2016 Dr. Straus saw appellant for a preoperative appointment and advised that she could not work. On November 1, 2016 he noted diagnoses of left insertional Achilles tendinopathy and posterior calcaneal exostosis and indicated that he had performed Achilles debridement and reconstruction and calcaneal exostectomy. Dr. Straus saw appellant in follow-up on November 8 and 14, 2016.

Appellant was placed on the supplemental rolls, effective November 1, 2016. Dr. Straus and Dr. Allen continued to advise that appellant was totally disabled.

On December 22, 2016 OWCP informed Dr. Allen that appellant's case had been accepted for spontaneous rupture of flexor tendons, left lower leg, short Achilles tendon (acquired), left ankle, calcaneal spur, left foot, and bilateral plantar fibromatosis.

By decision dated December 27, 2016, OWCP denied modification of its prior decisions, finding that the evidence submitted was insufficient to establish total disability for the period claimed.

On August 18, 2017 appellant requested reconsideration. She also continued to submit medical evidence regarding medical treatment in 2017. The employing establishment offered appellant a full-time modified mail handler position that she accepted on March 3, 2017. Appellant returned to work in that position on March 13, 2017.

By decision dated February 20, 2018, OWCP denied modification of its prior decisions, finding that the medical evidence of record was insufficient to establish total disability for the period August 18, 2015 through October 31, 2016.

On April 20, 2018 appellant requested reconsideration. She submitted an unsigned report from Dr. Allen's office. This report noted the accepted conditions and advised that, based on

functional capacity evaluations and duty status reports, appellant was totally disabled beginning August 18, 2015. Appellant also resubmitted Dr. Allen's October 25, 2016 report. OWCP also received medical evidence regarding appellant's medical treatment in 2018.

By decision dated July 16, 2018, OWCP denied modification of the prior decisions, finding that the medical evidence submitted did not provide a reasoned medical explanation to support total disability from work for the period August 15, 2015 to October 31, 2016.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.[6] 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.[7] 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.[8]

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.[9] Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.[10]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[11] Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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

[5] *Supra* note 1.

[6] *See D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

[7] *Id*.

[8] *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

[9] *Id.*

[10] *T.O.*, Docket No. 17-1177 (issued November 2, 2018); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[11] *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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]

ANALYSIS

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

Appellant had stopped work on August 18, 2015 and filed claims for wage-loss compensation beginning that day. On September 18, 2015 appellant's occupational disease claim was accepted for bilateral plantar fibromatosis. Following surgery on November 1, 2016, OWCP accepted additional conditions of spontaneous rupture of flexor tendons, left lower leg, short Achilles tendon (acquired), left ankle, and calcaneal spur, left foot. Appellant received compensation on the supplemental rolls commencing November 1, 2016 and continued to receive wage-loss compensation until she returned to modified duty on March 13, 2017.

Appellant's attending physicians, first Dr. Franz and then Dr. Allen, consistently advised that she was totally disabled from work beginning August 18, 2015 because she could not stand on hard surfaces, due to her employment-related conditions. In his August 31, 2015 report, Dr. Franz opined that her underlying tissue of the calcaneal aspect of the foot and heel were deformed due to her standing on concrete surfaces and walking on hard surfaces which contributed to her pain and inability to work. Additionally, Dr. Allen indicated that her condition of plantar fasciitis was acquired to prolonged weight-bearing on hard surfaces. Although Dr. Sadhu, a podiatrist, indicated on October 26, 2015 that appellant could return to full-duty work, at that time the only accepted condition was bilateral plantar fibromatosis. Dr. Allen documented that, while appellant's right foot and ankle were improving, her left foot and ankle condition continued to deteriorate, and on August 25, 2016 referred her to Dr. Straus. Dr. Straus, who performed the November 1, 2016 surgery, saw appellant on September 1, 2018 at which time he noted appellant's job duties, diagnosed a partial tear of the Achilles tendon, and advised that appellant was totally disabled from work.

Dr. Franz, Dr. Allen, and Dr. Straus provided affirmative opinions that appellant was totally disabled due to her employment-related conditions. They accurately identified specific employment factors which appellant claimed caused her condition and identified findings on examination. Furthermore, Dr. Allen recommended that appellant undergo physical performance testing and he relied upon the findings of such testing to note that she was incapable of returning to any work due to an inability to stand.

The Board finds that while these reports, which demonstrated evidence of object right foot and ankle findings, were insufficient to establish total disability for the from August 18, 2015 through October 31, 2016, this does not mean that they may be completely disregarded by OWCP.

[12] *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[13] *D.W., supra* note 11; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

It merely means that their probative value is diminished.[14] As delineated above, each physician described physical findings which could preclude appellant from performing available light-duty employment.

The Board notes that, while none of the reports of appellant's attending physicians is completely rationalized, they are consistent in indicating that she was totally disabled from work, with Dr. Franz and Dr. Allen indicating that her disability began on August 18, 2015. Their opinions are not contradicted by any substantial medical or factual evidence of record. As noted, Dr. Sadhu was not privy to the additional left foot and ankle conditions as they are conditions that were not accepted until after the November 1, 2016 surgery, well after his involvement in this claim. While the reports from appellant's physicians are insufficient to meet her burden of proof to establish her disability claim, they raise an uncontroverted inference between her bilateral foot and ankle conditions and the identified employment factors and are sufficient to require OWCP to further develop the medical evidence and the case record.[15]

The Board finds that the reports of appellant's attending physicians are sufficient, given the absence of any opposing medical evidence, to require further development of the claim.[16]

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.[17] Accordingly, the Board will remand the case to OWCP. On remand OWCP shall prepare a statement of accepted facts and refer appellant to an appropriate Board-certified specialist for a second opinion examination. The specialist shall then provide a rationalized medical opinion regarding whether the accepted foot and ankle conditions caused or contributed to appellant's claimed disability for work for the period August 18, 2015 through October 31, 2016. Following this and any such further development deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.[18]

CONCLUSION

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

[14] *See R.G.*, Docket No. 17-1179 (issued February 8, 2018).

[15] *D.W.*, Docket No. 17-1884 (issued November 8, 2018).

[16] *Id*.

[17] *See S.S.*, Docket No. 18-0397 (issued January 15, 2019).

[18] *See P.D.*, Docket No. 16-1171 (issued November 1, 2016).

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 3, 2019
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board