United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 19-0972**
	)	**Issued: November 18, 2019**
U.S. POSTAL SERVICE, ARCADIA STATION, Phoenix, AZ, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 April 5, 2019 appellant, through counsel, filed a timely appeal from a February 27, 2019 merit 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.

[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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a bilateral foot condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On April 27, 2018 appellant, then a 42-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she experienced swelling and pain in her foot as a result of walking eight miles a day on her dismount and loop route while in the performance of duty. She noted that she first became aware of her condition and its relationship to her federal employment on April 25, 2018. Appellant stopped work on April 30, 2018. On the reverse side of the claim form, the employing establishment controverted the claim as there was no medical evidence to support a work-related injury and pain was not a medical diagnosis.

In an accompanying undated statement, appellant noted that on April 25, 2018 she felt a sharp pain in her foot, which worsened with every step she took, while walking on her route. She reported her injury to her supervisor and manager and sought medical treatment on April 27, 2018.

In support of her claim, appellant submitted reports dated April 28 and 30, 2018 from Kaitlin Buss and Jaimie Branning, certified physician assistants who noted appellant's history of injury and provided examination findings. Ms. Buss diagnosed bunion and pain of the left foot. Ms. Branning diagnosed stable and improved left foot pain. Both physician assistants advised that appellant was fit for duty with restrictions.

Appellant also submitted a left foot x-ray report dated April 28, 2018 from Dr. Lee W. Beville, a Board-certified diagnostic radiologist. Dr. Beville provided impressions of no acute findings and normal for age.

In a development letter dated May 9, 2018, OWCP notified appellant of the factual and medical deficiencies of her claim. It provided a development questionnaire for her completion and requested that she submit a response in order to substantiate the factual basis of her claim. OWCP asked appellant to provide detailed information concerning the employment-related activities she believed contributed to her medical condition and how often and long she performed such duties. It also asked her to provide a description of all activities outside her federal employment. OWCP also instructed appellant to provide a narrative medical report from her physician which contained a detailed description of findings and diagnoses, explaining how her work activities caused, contributed to, or aggravated her medical condition. It afforded her 30 days to respond.

In a response dated May 4, 2018, appellant noted that she had worked as a city carrier for 17 years. She described the employment duties that she believed contributed to her condition. Appellant alleged that her job duties involved walking 2 to 12 miles a day, lifting up to 70 pounds, twisting, bending, climbing stairs, reaching, and repetitive elbow and wrist motion. She further alleged that from June/July 2004 until October 2017, she worked as a regular carrier on a route that was 75 percent "NBU" and involved walking an average of four miles or less depending on the amount of parcels. Appellant claimed that the increase in physical demand on her feet caused stiffness, soreness, and swelling which occurred on April 25, 2018. Occasionally, her feet became

sore throughout her career, but not to the point where every step she took hurt. Appellant further claimed that she never had any issues with her feet until she had bid on an all-residential and walking route. She claimed that given her duties since becoming a union steward in February 2016, she did not have any activities and hobbies. Appellant also did not have any stress.

OWCP subsequently received an Arizona state worker's and physician's report of injury dated April 28, 2018 from Ms. Buss who noted examination findings and reiterated her diagnosis of left foot bunion.

OWCP also received an undated letter by Dr. Vanna R. Campion, a Board-certified family practitioner. Dr. Campion noted that appellant was currently being evaluated by podiatry for a musculoskeletal injury sustained from prolonged walking that limited her ability to walk long distance without pain.

By decision dated June 25, 2018, OWCP accepted appellant's duties as a city carrier as described, but denied her occupational disease claim because the medical evidence of record failed to establish a medical condition causally related to the accepted work event(s). It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In a statement dated July 7, 2018, appellant described additional work duties that she believed contributed to her bilateral foot condition. She alleged that she walked seven plus miles five to six days a week depending on overtime scheduling, stood one to two hours a day while sorting mail, and stood in a stationary place 45 minutes to 1 hour while delivering to apartment boxes. Appellant also alleged that she parked to dismount to deliver single deliveries when she felt pain from the impact of her feet on the pavement.

Appellant submitted a July 6, 2018 report from Dr. Parisa M. Morris, an attending orthopedic surgeon. Dr. Morris noted that appellant presented for evaluation of bilateral plantar foot pain. She further noted that appellant reported that she worked as a mail carrier which typically involved walking seven plus miles a day over many years and now she had worsening plantar foot pain. Dr. Morris provided examination findings and an impression of plantar fasciitis. She recommended light-duty work.

On July 20, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review regarding the June 25, 2018 decision.

OWCP thereafter received an additional report dated July 30, 2018 from Dr. Morris regarding appellant's bilateral foot pain. Dr. Morris reported examination findings and reiterated her impression of plantar fasciitis and other acquired deformities of the feet. She advised that appellant's continued bilateral foot pain was "likely" related to her years of service as a mail carrier walking seven plus miles a day carrying approximately 35 pounds. Dr. Morris noted that she also had a subtle cavus foot alignment which "could be" contributing to her lateral foot pain, but maintained that her findings still "seemed" most consistent with plantar fasciitis although she could not elicit pain on examination.

An April 30, 2018 return to work status medical status report from a certified physician assistant, whose signature is illegible, indicated that appellant could work full time with restrictions.

Ms. Branning, in an April 30, 2018 patient clinical summary report, reiterated her prior diagnosis of left foot pain.

In work/school status forms dated September 19 and October 22, 2018, Dr. Morris again advised that appellant could return to light-duty work with restrictions.

In a January 10, 2019 letter, the employing establishment continued to controvert appellant's claim, contending that the medical evidence submitted was insufficient to establish causal relationship. In a February 11, 2019 letter, appellant responded that she had submitted sufficient medical evidence to establish that her claimed bilateral foot conditions and which necessitated work restrictions were employment related.

An OWCP hearing representative, by decision dated February 27, 2019, affirmed the June 25, 2018 decision. She found that the additional medical evidence submitted failed to establish causal relationship between the accepted employment factors and the diagnosed bilateral foot conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[6] (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;[7] and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[8]

[3] *Id.*

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

[7] *Michael R. Shaffer*, 55 ECAB 386 (2004).

[8] *Beverly A. Spencer*, 55 ECAB 501 (2004).

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a bilateral foot condition causally related to the accepted factors of her federal employment.

Appellant submitted a series of reports from her physician, Dr. Morris. In a July 30, 2018 report, Dr. Morris provided impressions of plantar fasciitis and other acquired bilateral foot deformities. She opined that appellant's foot pain was "likely" related to the years she walked seven plus miles a day carrying approximately 35 pounds while working as a mail carrier. Dr. Morris further opined that her subtle cavus foot alignment "could be" contributing to her lateral foot pain. She maintained that her findings still "seemed" most consistent with plantar fasciitis although she could not elicit pain on examination. Dr. Morris did not offer a clear opinion that appellant's plantar fasciitis and subtle cavus foot alignment were causally related to the accepted employment factors. The Board notes that she did not definitively relate her diagnosed medical conditions to the accepted work exposure. As such, Dr. Morris' opinion on causation is speculative and equivocal. To be of probative value, a physician's opinion on causal relationship should be one of reasonable medical certainty. Dr. Morris' opinion therefore lacks the specificity and detail needed to establish appellant's claim.[10]

Dr. Morris' remaining reports are of no probative value because they did not relate appellant's bilateral foot diagnoses and work restrictions to the accepted employment factors.[11] For the reasons stated, the Board finds that her reports are insufficient to establish appellant's burden of proof.

Dr. Campion, in an undated report, found that appellant had a musculoskeletal injury resulting from prolonged walking that limited her ability to walk long distance without pain. The Board finds that Dr. Campion's report note fails to provide a firm medical diagnosis as the physician only related a "musculoskeletal injury." Dr. Campion did not diagnose a medical condition.[12] As such, this report lacks the probative value and is thus insufficient to establish the claim.

[9] *See J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

[10] *C.H.*, Docket No. 19-0409 (issued August 5, 2019); *D.P.*, Docket No. 18-1647 (issued March 21, 2019); *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

[11] *See K.B.*, Docket No. 19-0411 (issued July 19, 2019); *S.G.*, Docket No. 19-0041 (issued May 2, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018) (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).

[12] *See J.S.*, Docket No. 18-0726 (issued November 5, 2018); *J.P.*, Docket No. 14-0087 (issued March 14, 2014).

Dr. Beville's April 28, 2018 left foot x-ray report is also insufficient to establish causal relationship. The Board has consistently held that diagnostic studies are of limited probative value as they do not provide an opinion on causal relationship between the accepted employment factor(s) and a diagnosed condition.[13] Therefore Dr. Beville's April 28, 2018 diagnostic report is insufficient to establish appellant's claim.

Appellant also submitted reports from several physician assistants. These reports have no probative medical value in establishing appellant's claim as physician assistants are not considered "physicians" as defined under FECA.[14] As such, this evidence is also insufficient to meet appellant's burden of proof.

On appeal counsel contends that OWCP failed to adjudicate the claim in accordance with the proper standard of causation, to give due deference to the findings of the attending physician, and to follow its procedure manual. He has not, however, provided any evidence to support his arguments. As discussed above, Dr. Morris did not provide a rationalized opinion sufficient to establish that appellant's diagnosed bilateral foot conditions were caused or aggravated by the accepted factors of her federal employment.

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 a bilateral foot condition causally related to the accepted factors of her federal employment.

[13] *See G.M.*, Docket No. 19-0539 (issued August 6, 2019); *T.S.*, Docket No. 18-0150 (issued April 12, 2019); *L.T.*, Docket No. 18-1603 (issued February 21, 2019).

[14] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See id.* at § 8102(2); 20 C.F.R. § 10.5(t); *T.C.*, Docket No. 19-0227 (issued July 11, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 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