

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

D.K., Appellant)	
)	
and)	Docket No. 19-1034
)	Issued: November 4, 2019
U.S. POSTAL SERVICE, POST OFFICE, Randolph, OH, 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
JANICE B. ASKIN, Judge

JURISDICTION

On April 11, 2019 appellant, through counsel, filed a timely appeal from a February 28, 2019 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.

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 right foot/ankle condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On March 17, 2017 appellant, then a 46-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a right foot/ankle condition due to factors of her federal employment including walking six to seven hours a day while carrying mail. She noted that she first became aware of her claimed condition on May 30, 2014 and first realized its relation to her federal employment duties on December 18, 2015. Appellant stopped work on January 9, 2017.

A January 17, 2017 right lower extremity computerized tomography (CT) scan revealed calcaneal spurring. A February 16, 2017 bilateral lower extremity electromyogram and nerve conduction velocity (EMG/NCV) scan revealed diffuse peripheral neuropathy of mild severity of mixed axonal and demyelinating character.

In a statement dated March 17, 2017, appellant explained that on May 30, 2014 she experienced excruciating pain in her right foot which she attributed to carrying mail weighing up to 35 pounds for six to seven hours a day, five days a week. She was treated by a physician on December 18, 2015 and continued to manage her pain until January 9, 2017 when she could no longer carry mail and stopped work.

In a development letter dated March 29, 2017, OWCP notified appellant of the type of additional evidence needed to establish her occupational disease claim, including a statement from her attending physician explaining a causal relationship between those exposures and the claimed conditions. It afforded her 30 days to submit the requested evidence.

OWCP received laboratory reports dated January 11, 2017 and copies of the previously submitted diagnostic studies. Additionally, it received a record of appellant's various appointments with her podiatrist(s) from December 2015 through February 2017.

In a statement dated April 5, 2017, appellant indicated that her correct date of injury was May 30, 2015, rather than May 30, 2014 as initially noted on her Form CA-2.

By decision dated June 14, 2017, OWCP denied appellant's claim, finding that she had not met her burden of proof to establish that her claimed medical condition was causally related to the established employment factors.

Appellant was treated by Dr. Nikolay Gatalyak, a podiatrist, on June 2, 2017 for right lower extremity pain. She related that she was a mail carrier for many years and, while at work, she walked approximately 10 miles a day and developed foot pain. Appellant indicated that she did not experience foot problems prior to becoming a mail carrier. She noted that her symptoms improved after being assigned a driving route instead of a walking route. Findings on examination revealed light touch sensation present in both feet, positive Tinel's sign in tarsal tunnel region and med dorsal cut nerve, no evidence of erythema, ecchymosis, open lesions, or infection, intact

muscle strength, and pain along the tarsal tunnel. Dr. Gatalyak diagnosed pain in limb, tenosynovitis of the ankle, tarsal tunnel syndrome, and neuritis. He administered a steroid injection. Dr. Gatalyak opined that appellant's right foot/ankle symptoms could have started due to the nature of her job and the physical demands including ambulating greater than 10 miles per day on uneven terrain with additional weight from the mail.

On June 22, 2017 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on November 7, 2017.

By decision dated December 8, 2017, an OWCP hearing representative affirmed the June 14, 2017 decision.

Appellant was treated by Dr. Aaron J. Chokan, a podiatrist, on December 5, 2017 for right ankle pain which began one year earlier. She reported working as a mail carrier and walking 10 to 14 miles a day and expressed concern that her job duties created her foot problems. Dr. Chokan opined that because appellant's condition has been on-going for a year there could be a causal relationship between her inflamed tarsal tunnel nerve and enlarged accessory muscles and overuse from walking. He noted no tenderness of the lower extremities, intact strength, pain with range of motion along the posterior tibial nerve and flexor tendon of the medial ankle, positive Tinel's sign of right ankle and lower leg, and pain with eversion of the right ankle. Dr. Chokan reviewed the magnetic resonance imaging (MRI) scan of the foot that, which was positive for flexor digitorum accessory muscle which, he opined, could have been from repetitive ankle sprains and long walking. He diagnosed tarsal tunnel syndrome and right lower limb and other myositis of the right ankle and foot. Dr. Chokan recommended surgery to address the conditions.

On December 22, 2017 Dr. Chokan performed a tarsal tunnel release of the right ankle, implantation of the nerve and nerve fibers into the muscle, and removal of accessory muscle and myomectomy of the accessory muscle. He diagnosed neuritis of the posterior tibial nerve, right lower extremity, tarsal tunnel syndrome right lower extremity, neuroma of the posterior tibial nerve, and chronic hypertrophic muscle of the flexor longus accessory muscle.

In reports dated January 4 and 11, 2018, appellant presented postoperatively with foot pain and muscle spasms. Dr. Chokan noted an incision of the medial ankle with swelling, moderate pain, mild bruising, and ecchymosis. He diagnosed tarsal tunnel syndrome of the right lower limb and other myositis of the right ankle and foot, and recommended a cam walker boot and multilayer compression wrap. On January 11, 2018 Dr. Chokan removed sutures and indicated that appellant was disabled from work for two additional weeks.

On February 6, 2018 appellant, through counsel, requested reconsideration.

By decision dated May 2, 2018, OWCP denied modification of the December 8, 2017 decision.

On October 4, 2018 appellant, through counsel, requested reconsideration. Counsel submitted a July 5, 2018 report from Dr. Chokan who noted that appellant had pain and nerve irritation in her right foot since 2014. He explained that her condition was related to her work due to valgus deformity, and required walking on uneven terrain during her mail route, which caused irritation and stimulation of pain in her right ankle. Appellant reported that during her time with

the postal service her symptoms became worse. Dr. Chokan opined that her symptoms were caused by her deformity, delivering mail on uneven terrain, and hopping in and out of a mail truck. He noted that appellant's pain resolved and she returned to work with modifications.

By decision dated December 7, 2018, OWCP denied modification of the May 2, 2018 decision.

On January 25, 2019 appellant, through counsel, requested reconsideration. In support of reconsideration, counsel submitted a December 4, 2018 report from Dr. Chokan who noted that she presented on July 12, 2018, six days after an injury which occurred when she stepped out of her work truck and twisted her left ankle. Dr. Chokan noted that x-rays revealed a small hairline fracture of her fibula and that she was treated with immobilization. He opined that appellant sustained a work-related injury. The December 4, 2018 report referenced OWCP File No. xxxxxx482.

By decision dated February 28, 2019, OWCP denied modification of the December 7, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 period of FECA,³ 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.⁴ 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.⁵

In an occupational disease claim, appellant's burden requires submission of 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; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

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 medial

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *P.D.*, Docket No. 17-1885 (issued September 17, 2018).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁷

ANALYSIS

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

Appellant was treated by Dr. Gatalyak on June 2, 2017, for right lower extremity pain. She reported working as a mail carrier for many years and walked approximately 10 miles a day and developed foot pain. Dr. Gatalyak diagnosed pain in limb, tenosynovitis of the ankle, tarsal tunnel syndrome, and neuritis. He opined that appellant's foot and ankle symptoms could have started due to the nature of her job and the physical demands including ambulating more than 10 miles a day on uneven terrain with a mailbag. While Dr. Gatalyak repeated the history of injury as reported by her, he did not provide his own opinion regarding whether her condition was work related. The mere recitation of patient history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.⁸ Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's reports are of limited probative value.⁹

On December 5, 2017 Dr. Chokan treated appellant for right ankle pain and opined that because her condition had been ongoing for a year there "could" be a causal relationship between her inflamed tarsal tunnel nerve and enlarged accessory muscles and overuse from walking her 10 to 14 miles mail route. He noted that a right foot MRI scan was positive for flexor digitorum accessory muscle which "could have" been from repetitive ankle sprains and long walking. Dr. Chokan diagnosed tarsal tunnel syndrome and right lower limb and other myositis of the right ankle and foot. The Board notes that his report provides some support for causal relationship, but is insufficient to establish the claimed right foot condition was causally related to appellant's employment duties. In that report, Dr. Chokan opined that it "could" be due to her work duties. However, his report provides only speculative support for causal relationship as he qualifies his support by noting that appellant's employment "could" have caused her condition. Therefore, this report is insufficient to meet her burden of proof.¹⁰

Similarly, an operative report from Dr. Chokan dated December 22, 2017, diagnosed neuritis of the posterior tibial nerve, right lower extremity, tarsal tunnel syndrome right lower extremity, neuroma of the posterior tibial nerve, and chronic hypertrophic muscle of the flexor longus accessory muscle. In other reports dated January 4 and 11, 2018, Dr. Chokan diagnosed tarsal tunnel syndrome of the right lower limb and other myositis of the right ankle and foot. The Board finds that these reports of Dr. Chokan failed to offer an opinion regarding the cause of

⁷ *R.P.*, Docket No. 17-1914 (issued November 27, 2018).

⁸ *See J.G.*, Docket No. 17-1382 (issued October 18, 2017).

⁹ *See A.B.*, Docket No. 16-1163 (issued September 8, 2017).

¹⁰ Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

appellant's condition. 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.¹¹ These reports, therefore, are insufficient to establish appellant's claim.

On July 5, 2018 Dr. Chokan opined that appellant's condition was related to valgus deformity, the need to walk on uneven terrain during her mail route, and hopping in an out of a mail truck, which caused irritation and pain in her right ankle. He explained that repetitive valgus stress on the ankle caused her condition. Dr. Chokan did not, however, provide medical rationale for his causation finding. The Board has held that medical conclusions unsupported by rationale are of little probative value.¹²

On December 4, 2018 Dr. Chokan treated appellant for a left ankle injury which occurred at work on July 12, 2018. This report is insufficient to meet her burden of proof with respect to her claimed right foot/ankle condition. Dr. Chokan referenced a left ankle traumatic injury that occurred on July 6, 2018 which is the subject of OWCP File No. xxxxxx482, and that particular claim is not currently before the Board.

Lastly, appellant submitted a CT scan of the right foot dated January 17, 2017 and an EMG/NCV report dated February 16, 2017. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between her employment duties and a diagnosed condition.¹³

The Board finds that the above-noted medical evidence, including the reports from appellant's podiatrist, are insufficient to establish that her right foot/ankle condition is causally related to the accepted factors of her federal employment. Accordingly, appellant has not met her burden of proof to establish entitlement 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 a right foot/ankle condition causally related to the accepted factors of her federal employment.

¹¹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² See *T.A.*, Docket No. 18-0431 (issued November 7, 2018).

¹³ See *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board