



## **ISSUE**

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

## **FACTUAL HISTORY**

On June 5, 2018 appellant, then a 51-year-old letter carrier, filed a notice of recurrence (Form CA-2a) alleging that she sustained a recurrence of disability on May 3, 2018. She had originally injured her left foot and ankle on February 26, 2018 when she tripped over a light fixture on the ground while in the performance of duty, which OWCP accepted for left foot strain under File No. xxxxxx448. Appellant had resumed her normal duties on April 30, 2018 and filed a recurrence claim three days later. She stated that her left foot was swollen from walking and ascending and descending steps while in the performance of duty. Appellant indicated that at first she was able to perform her duties, but as the day went on she felt pain and swelling that increased over the following three days. She stopped work on May 3, 2018.

On June 5, 2018, appellant informed the employing establishment that her work caused her ankle and foot to swell and have pain.

An x-ray dated May 7, 2018 revealed no evidence of fracture or dislocations of the left ankle or left foot. Paracervical muscle spasm of the left ankle was noted.

In a May 8, 2018 report, Dr. Pushp R. Bhansali, an orthopedic surgeon, diagnosed internal derangement of the left ankle with post-traumatic swelling and contusion/sprain of the left foot. In a prescription note dated May 31, 2018, he indicated that appellant was seen that day for a work-related injury to the left ankle. On May 31, 2018 Dr. Bhansali advised that appellant could not return to work until her next appointment on June 14, 2018.

In a development letter dated June 27, 2018, OWCP notified appellant that it was converting her recurrence claim to a claim for a new occupational disease because the alleged injury occurred as a result of a new work exposure due to repetitive work over the course of three days. It advised her of the deficiencies of her claim and instructed her as to the factual and medical evidence necessary to establish her claim. OWCP afforded appellant 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted a July 20, 2018 prescription note from Dr. Bhansali who reiterated that she injured her left foot and ankle and needed a magnetic resonance imaging (MRI) scan of her left ankle to determine the extent of her injury.

By decision dated July 31, 2018, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed left foot/ankle condition(s) and the accepted factors of her federal employment.

In an attending physician's report (Form CA-20) dated July 26, 2018, Dr. Bhansali reiterated his diagnoses and advised appellant to stay off work until her next visit on August 9, 2018. He checked a box marked "yes," indicating his belief that the conditions were caused or aggravated by her federal employment.

On August 8, 2018 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

In an August 16, 2018 prescription note, Dr. Bhansali diagnosed contusion sprain of left foot and ankle and continued to advise that appellant was not able to return to work. In an attending physician's report (Form CA-20) dated August 27, 2018, he reiterated his diagnoses and advised appellant to "stay off work until her next appointment." Dr. Bhansali checked a box marked "yes," indicating his belief that the conditions were caused or aggravated by her federal employment.

On December 6, 2018 Dr. Siddhartha Sharma, a podiatrist, diagnosed left ankle derangement, left ankle joint effusion, left ankle osteochondral lesion of medial talar dome with high-grade cartilage loss, left ankle thickening of anterior talofibular ligament and calcaneofibular ligament, left ankle instability, left ankle ligamentous laxity, left ankle Achilles tendinosis with interstitial tear, left ankle plantar fascia partial-thickness tear of central and lateral bands, left ankle posterior tibial tendon tendinosis with interstitial tear, and sinus tarsi syndrome. He asserted that appellant was undergoing physical therapy which was not improving her symptoms and opined that she was totally disabled.

During the telephonic hearing held on January 10, 2019 before an OWCP hearing representative, appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

Appellant subsequently submitted an x-ray of the left foot dated March 16, 2018 which showed mild hallux valgus with degenerative changes at the first metatarsophalangeal (MTP) joint, pes planus, hammertoes, degenerative change midfoot, and large plantar calcaneal spur and small posterior calcaneal enthesophyte.

Appellant also submitted an MRI scan of the left ankle dated October 25, 2018, which demonstrated osteochondral lesion of the medial talar dome with high-grade cartilage loss, marrow edema, cystic change, and 1 mm of inferior articular depression, mild thickening of the anterior talofibular ligament and calcaneofibular ligament consistent with previous low-grade partial thickness tear, osteoarthritis of the talonavicular and calcaneocuboid joint, plantar fasciitis, atrophy of the abductor digit minimi, Ganglion cyst, sinus tarsi edema, Achilles tendinosis, tendinosis and interstitial tear of the distal posterior tibial tendon, and evidence of pes planus.

Appellant further submitted physical therapy treatment notes dated March 23, 2018 through January 16, 2019.

In reports dated February 18, March 23, April 27, August 17, October 1 and 31, and November 30, 2018, Dr. Nitin Narkhede, a general practitioner, diagnosed left foot and ankle sprain and asserted that appellant was injured at work on February 26, 2018 due to tripping on a light fixture.

On January 31, 2019 Dr. Sharma reiterated his diagnoses and reported that appellant wanted to move forward with surgery since she had not made any improvement with conservative therapy.

By decision dated March 22, 2019, OWCP's hearing representative affirmed the July 31, 2018 decision.<sup>4</sup>

### **LEGAL PRECEDENT**

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, 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, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>7</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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; (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.<sup>8</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>9</sup> 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.<sup>10</sup> Additionally, the physician's opinion 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).<sup>11</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation,

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<sup>4</sup> The hearing representative advised her to consider pursuing a claim expansion and any resultant recurrent disability based on new imaging studies and medical opinion found in her previously accepted claim, under OWCP File No. xxxxxx448.

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

<sup>6</sup> *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

<sup>7</sup> *K.V. and M.E., id.; Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>10</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>11</sup> *Id.*; *Victor J. Woodhams, supra* note 8.

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>12</sup>

### ANALYSIS

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

Appellant had a previously accepted left foot and ankle condition she sustained on February 26, 2018 when she tripped over a light fixture on the ground. OWCP accepted left foot and ankle sprain under OWCP File No. xxxxxx448. Appellant alleged that she reinjured her left foot and ankle after she resumed her normal work duties from April 30 to May 3, 2018.

In support of her claim, appellant submitted reports from Dr. Bhansali. In his May 8 and 31, 2018 reports, Dr. Bhansali noted that she was seen that day for a work-related injury to her left ankle and diagnosed internal derangement of the left ankle with post-traumatic swelling and contusion/sprain of the left foot. However, he failed to identify the specific employment factors alleged by appellant or provide a pathophysiological explanation as to how those activities either caused or contributed to her diagnosed condition.<sup>13</sup> The Board has consistently held that rationalized medical opinion evidence is particularly necessary when there are preexisting conditions involving the same body part,<sup>14</sup> and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.<sup>15</sup> Therefore, these reports are insufficient to establish causal relationship between appellant's diagnosed left ankle condition and the accepted employment factors.

In a subsequent report dated July 26, 2018, Dr. Bhansali checked a box marked "yes," indicating that appellant's conditions were caused or aggravated by the employment activity. The Board has held that a checkmark or affirmative notation in response to a form question on causal relationship is insufficient, without medical rationale, to establish causal relationship.<sup>16</sup> The Board finds that this report is also insufficient to meet appellant's burden of proof

Appellant was also followed by Dr. Sharma, who diagnosed multiple left ankle conditions on December 6, 2018, and Dr. Narkhede, who had treated her for her previously accepted

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<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>13</sup> *Supra* note 10.

<sup>14</sup> *E.g.*, *K.R.*, Docket No. 18-1388 (issued January 9, 2019).

<sup>15</sup> See, *e.g.*, *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *J.B.*, Docket No. 17-1870 (issued April 11, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *P.O.*, Docket No. 14-1675 (issued December 3, 2015).

<sup>16</sup> See *H.A.*, Docket No. 18-1466 (issued August 23, 2019); *K.T.*, Docket No. 15-1758 (issued May 24, 2016).

February 26, 2018 employment injury. As neither physician addressed causal relationship, their reports are of no probative value on the issue of causal relationship.<sup>17</sup>

Appellant further submitted diagnostic imaging studies in the form of x-rays dated March 16 and May 7, 2018 and an MRI scan dated October 25, 2018 in support of her claim. The Board has held that diagnostic studies lack probative value as they do not provide an opinion on causal relationship between the employment factors and her diagnosed conditions.<sup>18</sup>

Additionally, appellant submitted a series of physical therapy treatment notes into the record. The Board has held that medical reports signed solely by a physical therapist are of no probative value as such health care providers are not considered physicians as defined under FECA and are therefore not competent to provide medical opinions.<sup>19</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>20</sup>

As appellant has not submitted any rationalized medical evidence to support her claim that she sustained a left foot/ankle condition causally related to the accepted employment factors, she has not met her burden of proof.

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

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

<sup>18</sup> See *I.C.*, Docket No. 19-0804 (issued August 23, 2019).

<sup>19</sup> See *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law); *J.M.*, 58 ECAB 448 (2007) (physical therapists are not considered physicians under FECA).

<sup>20</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 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