

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

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**K.D., Appellant** )

**and** )

**U.S. POSTAL SERVICE, ARLINGTON POST  
OFFICE, Baltimore, MD, Employer** )  
\_\_\_\_\_ )

**Docket No. 19-1405  
Issued: April 9, 2020**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On May 29, 2019 appellant filed a timely appeal from a March 7, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a left foot condition causally related to the accepted July 10, 2018 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the March 7, 2019 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 evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On July 30, 2018 appellant, then a 25-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 10, 2018 she was walking and felt a sharp pain shooting through her left foot while in the performance of duty. The employing establishment noted that she stopped work on July 10, 2018 and had not returned.

In a July 11, 2018 hospital record, bearing an illegible signature, it was noted that appellant should be held off work from July 11 through 17, 2018 and provided work restrictions of no standing or walking.

In a July 12, 2018 narrative statement, appellant noted that as she was walking down the street at 12:00 p.m. on July 10, 2018 she felt a sharp pain shooting through her left foot. She continued on her route and reported the incident on July 12, 2018.

A July 19, 2018 duty status report (Form CA-17) from a podiatry specialist with an illegible signature indicated that appellant was walking when she experienced pain in her left foot. The report indicated “rule out stress fracture and tend[i]nitis” in response to the “diagnosis due to injury” and recommended that she not resume work. Appellant’s restrictions were also provided.

In a July 30, 2018 narrative statement, the employing establishment controverted appellant’s claim.

In an August 14, 2019 development letter, OWCP informed appellant that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that continuation of pay was not controverted by the employing establishment, and thus limited expenses had therefore been authorized. However, a formal decision was now required. OWCP informed appellant that additional factual and medical evidence was required in support of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received an August 13, 2018 attending physician’s report (Form CA-20), wherein Dr. Jerry Katz, a Board-certified podiatry specialist, indicated that appellant had pain in her left foot and noted that he provided her with a surgical shoe, a cane, a walker, and stepping padding. Dr. Katz noted that he first examined her on July 16, 2018 and that she could not return to work until August 29, 2018. He also noted that there was no history or evidence of a concurrent or preexisting injury, and that on August 9, 2018 appellant had a positive bone scan.

In an accompanying August 13, 2018 Form CA-17 report, Dr. Katz noted that appellant was walking when she felt a sharp pain in her left foot. His clinical findings included a stress fracture on the second metatarsal of her left foot, which he noted was due to her injury. Appellant was told to not resume work, but Dr. Katz also allowed “limited duty within restrictions” and listed her work restrictions.

In an August 13, 2018 report, Dr. Katz indicated that he diagnosed appellant with a stress fracture of the second metatarsal of her left foot and related that it was caused by her employment, as it involved weight bearing. He indicated that she could not return to work until August 29, 2018.

Dr. Katz noted limited weight bearing as a work restriction for appellant and that her bone scan was positive.

On August 24, 2018 appellant completed OWCP's development questionnaire and signed the statement of certification. She noted that she had not sustained any other injury between the date of her alleged employment injury and the date she first reported it, and she explained that she first consulted with Krista Brown, a nurse practitioner, on July 11, 2018 regarding her injury. Appellant indicated that she elevated her foot on and off at home and that she had no similar disability or symptoms prior to her alleged injury.

By decision dated September 24, 2018, OWCP denied appellant's traumatic injury claim finding that the evidence of record was insufficient to establish causal relationship between a diagnosed medical condition and the accepted July 10, 2018 employment incident.

OWCP subsequently received additional evidence. An August 9, 2018 bone scan report by Dr. Pavni Patel, a Board-certified nuclear medicine specialist, noted that appellant experienced atraumatic left foot discomfort. Her findings included focal increased blood pool uptake in the region of the second metatarsal of the left foot. Dr. Patel concluded that appellant had an occult fracture on the head of her second metatarsal of the left foot.

In an October 4, 2018 report, Dr. Katz indicated that appellant complained of a painful left extremity and asked to wear a boot. He conducted a physical examination which revealed palpable tenderness in the second metatarsal on her left foot. Appellant stood in rear-foot neutral, had a decreased medial longitudinal arch, and her gait was heel to toe with moderate compensatory pronation. Oblique, dorsal-plantar and lateral radiographs of her left foot revealed decreased bone stock, and August 9, 2018 bone scan findings were consistent with a stress fracture of her left foot. Dr. Katz noted that appellant had been doing well in a cam walker, which she used from July 26 until September 10, 2018. Appellant had transitioned into a surgical shoe with supportive shoe-gear and a temporary orthotic, and in the past several weeks she had increased her weight-bearing and job-related activities. Dr. Katz recommended that she go back to using her cam walker. He opined that, as appellant was relatively sedentary at the time of her original symptoms, she suffered a work-related injury due to the weight-bearing activities necessitated by her job.

In an October 4, 2018 Form CA-17 report, Dr. Katz provided new work restrictions and released appellant to work on September 10, 2018. On October 10, 2018 the employing establishment offered her a modified assignment, but she rejected the offer.

In an October 12, 2018 medical report, Dr. Katz indicated that appellant presented with pain in her left foot which she stated was worsening because she was using it more. He mentioned that a July 10, 2018 bone scan was positive for a stress fracture of her second metatarsal in her left foot. Dr. Katz discussed various treatment options with appellant and recommended using a cam walker as needed.

On November 6, 2018 appellant requested reconsideration.

By decision dated March 7, 2019, OWCP denied modification of its September 24, 2018 decision, finding that the evidence of record was insufficient to establish causal relationship.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</sup> 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 of FECA,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.<sup>7</sup> First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>8</sup> Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>9</sup>

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 employment incident.<sup>10</sup>

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left foot condition causally related to the accepted July 10, 2018 employment event.

In support of her claim appellant submitted reports from Dr. Katz. On an August 13, 2018 Form CA-17 report, Dr. Katz noted that appellant was walking when she felt a sharp pain in her left foot. He diagnosed a stress fracture on the second metatarsal of her left foot caused by her

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *R.B.*, Docket No. 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>8</sup> *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>9</sup> *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 7.

<sup>10</sup> *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

employment. Dr. Katz did not explain, however, how appellant's walking at work caused her diagnosed left foot stress fracture. To be of probative medical value, a medical opinion must explain how, physiologically, the mechanism of injury was sufficient to have caused or contributed to the diagnosed conditions.<sup>11</sup>

In an August 13, 2018 report, Dr. Katz noted a diagnosis of stress fracture on the second metatarsal of appellant's left foot and opined that it was caused by her employment, as it involved weight bearing. The Board finds that this opinion by him is conclusory in nature as it lacked specificity and detail regarding her weight-bearing activities and how or why they were sufficient to have caused or aggravated her diagnosed left foot condition. The Board has held that a conclusory medical opinion is insufficient to establish causal relationship.<sup>12</sup> Thus, this report is also insufficient to meet appellant's burden of proof.<sup>13</sup>

Similarly, in his October 4 and 12, 2018 reports, Dr. Katz noted that appellant presented with pain in her left foot. He conducted a physical examination and diagnosed a stress fracture in her left foot. Dr. Katz opined that, as appellant was relatively sedentary at the time of her original symptoms, she suffered a work-related injury due to the weight-bearing activities necessitated by her job. He did not, however, provide a pathophysiological explanation as to how the employment incident caused or contributed to the diagnosed conditions.<sup>14</sup> 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 the accepted employment incident is sufficient to establish causal relationship.<sup>15</sup> The reports OWCP received from Dr. Katz are therefore insufficient to establish appellant's claim.

In support of her claim, appellant submitted July 11, 2018 hospital records and a July 19, 2018 Form CA-17 report, both of which contained illegible signatures. The Board has held a report that is unsigned or bears an illegible signature lacks proper identification and lacks probative value as medical evidence.<sup>16</sup>

Appellant also submitted an August 9, 2018 bone scan report by Dr. Patel. The Board has held, however, that diagnostic studies standing alone lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>17</sup>

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<sup>11</sup> A.W., Docket No. 19-0327 (issued July 19, 2019).

<sup>12</sup> J.H., Docket No. 19-1435 (issued February 6, 2020).

<sup>13</sup> *Id.*

<sup>14</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>15</sup> J.R., Docket No. 18-0853 (issued March 9, 2020).

<sup>16</sup> Z.G., Docket No. 19-0967 (issued October 21, 2019).

<sup>17</sup> N.B., Docket No. 19-0221 (issued July 15, 2019).

The Board finds that the record lacks rationalized medical evidence establishing causal relationship between appellant's left foot condition and the July 10, 2018 accepted employment incident. Thus, appellant 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 condition causally related to the accepted July 10, 2018 employment event.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 7, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board