

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

A.C., Appellant)	
)	
and)	Docket No. 19-1607
)	Issued: April 23, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Carlinville, IL, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On July 23, 2019 appellant, through counsel, filed a timely appeal from a July 3, 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.³

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.*

³ The Board notes that, following the July 3, 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 additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a left foot condition causally related to the accepted December 7, 2018 employment incident.

FACTUAL HISTORY

On December 11, 2018 appellant, then a 30-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on December 7, 2018 she experienced severe pain in the left foot as a result of walking while in the performance of duty. On the reverse side of the claim form, appellant's supervisor controverted her claim asserting that she had a preexisting condition, plantar fasciitis. Appellant stopped work on December 11, 2018.

In support of her claim, appellant submitted an undated authorization request form which indicated that she sought authorization for treatment for left foot plantar fascial fibromatosis.

In a December 12, 2018 duty status report (Form CA-17), Dr. Renan Mapue, a specialist in internal medicine, indicated a date of injury of December 11, 2018 and diagnosed left foot plantar fasciitis. He noted that appellant was advised to resume work without restrictions on December 17, 2018.

In a letter dated December 19, 2018, the employing establishment controverted appellant's claim. It argued that she had a preexisting condition prior to her federal employment. The employing establishment therefore asserted that appellant's left foot condition was not caused or aggravated by factors of her federal employment.

In a development letter dated December 21, 2018, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a request form dated January 10, 2019 from Dr. Joseph Rolens, a podiatrist, who diagnosed left foot Morton's neuroma and requested authorization from OWCP for a neuroma excision.⁴

By decision dated January 25, 2019, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish a causal relationship between her diagnosed medical conditions and the accepted employment incident.

In a report dated December 27, 2018, Dr. Rolens noted that appellant was experiencing pain in the ball of her left foot, which began on December 7, 2018 while she was at work. He indicated that steroids and nonsteroidal anti-inflammatory drugs had not helped with the pain. Dr. Rolens reviewed three x-ray views of appellant's left foot and found no signs of a fracture. After examining her left foot, he diagnosed a lesion of the plantar nerve in the left lower limb, metatarsalgia in the left foot, and pain in the left foot. Dr. Rolens performed an injection to provide

⁴ OWCP also received an undated, unsigned Form CA-17 which indicated that appellant was not advised to resume work.

pain relief and reduce inflammation. He also provided appellant with metatarsal pads and instructed her to wear them daily.

On January 5, 2019 Dr. Rolens saw appellant in follow-up and noted that she was still experiencing pain in her left foot. He noted that the injection provided complete relief from pain for one day, but the pain recurred after she returned to work. Dr. Rolens again reviewed three x-ray views of appellant's left foot and found no signs of a fracture. After examining her left foot, he again diagnosed a lesion of the plantar nerve in the left lower limb, metatarsalgia in the left foot, and pain in the left foot. Dr. Rolens administered a second pain injection.

On January 10, 2019 Dr. Rolens saw appellant in follow-up and reported that her left foot pain had returned. He examined her and again noted his review of three x-ray views of her left foot and found no signs of a fracture, but diagnosed a lesion of the plantar nerve in the left lower limb, metatarsalgia in the left foot, and pain in the left foot. Dr. Rolens discussed the possibility of surgery and opined that it was the best option since conservative treatment had failed to produce lasting results.

On January 24, 2019 Dr. Rolens saw appellant for a final visit and related that she was still experiencing left foot pain. He reported that she had started feeling tingling in her left foot. After examining appellant's left foot, Dr. Rolens diagnosed left tarsal tunnel syndrome, Morton's neuroma in the left foot, metatarsalgia in the left foot, and pain in the left foot. He discussed surgery with her and recommended tarsal tunnel release and neuroma excision procedures. In a separate January 24, 2019 report, Dr. Rolens noted that he saw appellant for a total of four occasions.

In a January 24, 2019 request form, Dr. Rolens requested authorization from OWCP for neuroma excision and left tarsal tunnel release procedures that would occur from January 25 to February 17, 2019.

On February 1, 2019 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

OWCP received two additional Form CA-17 reports. In a December 27, 2018 Form CA-17 report, Dr. Rolens diagnosed left foot neuroma and noted that appellant was advised to resume work without restrictions on December 28, 2018. The date of injury was indicated as December 11, 2018. In a January 10, 2019 Form CA-17 report, Dr. Rolens diagnosed appellant with a lesion of the plantar nerve in the left lower limb and noted that she was not advised to resume work. The date of injury appears to indicate December 9, 2018.

The hearing was held on May 17, 2019.⁵

⁵ Counsel indicated that further medical evidence from appellant's treating physician would clarify whether this was a traumatic or occupational injury. The hearing representative clarified that some of the evidence of record suggested occupational exposure versus a traumatic exposure. She noted that the claim would remain as a traumatic injury claim, but if the medical evidence showed an occupational condition, appellant would not be prohibited from filing an occupational disease claim. The hearing representative held the case record open for 30 days for the submission of additional evidence.

On May 31, 2019 OWCP received an undated letter by Dr. Rolens. It indicated that he saw appellant for Morton's neuroma in the left foot and tarsal tunnel syndrome in the left ankle beginning December 27, 2018. The letter reported that appellant underwent surgical excision for the neuroma and tarsal tunnel release for the left ankle on February 4, 2019. It further indicated that her conditions "may have been caused by work activity or [they] may have aggravated a preexisting condition." The letter specified that the repetitive stress associated with appellant's 10 to 15 miles of walking per day as a postal worker "would cause additional inflammation to the affected areas of the foot, worsening the conditions, and preventing recovery." It noted that she had undergone surgical intervention on February 4, 2019 which was required due to aggravation by the amount of weight bearing required by duties of her employment and was necessary as her job duties prevented her from getting sufficient rest and reduction in weight-bearing.

By decision dated July 3, 2019, OWCP's hearing representative affirmed the January 25, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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,⁷ 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.⁸ 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.⁹

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.¹⁰ The second component is whether the employment incident caused a personal injury.¹¹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹² 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

⁶ *Supra* note 2.

⁷ *T.G.*, Docket No. 19-1441 (issued January 28, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *I.M.*, Docket No. 19-1038 (issued January 23, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ 20 C.F.R. § 10.115; *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹⁰ *A.S.*, Docket No. 18-1684 (issued January 23, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹¹ *M.L.*, Docket No. 18-0153 (issued January 22, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

¹² *T.G.*, *supra* note 7; *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.¹³

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, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁴

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left foot condition causally related to the accepted December 7, 2018 employment incident.

In support of her claim, appellant submitted a Form CA-17 report from Dr. Mapue dated December 12, 2018, two unsigned Form CA-17 reports dated December 27, 2018 and January 10, 2019, and two authorization requests from Dr. Rolens. These reports merely noted diagnoses and work restrictions, but did not provide an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of a diagnosed condition is of no probative value on the issue of causal relationship.¹⁵ These reports are therefore insufficient to establish appellant's claim.

Appellant also submitted a series of progress reports from Dr. Rolens dated from December 27, 2018 through January 24, 2019. In these reports, Dr. Rolens noted that her left foot pain began at work on December 7, 2018 and worsened when she returned to work. These documents provided diagnoses and requested surgical procedures related to appellant's left foot condition. However, Dr. Rolens did not provide a rationalize opinion regarding causal relationship in any of these documents. 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.¹⁶ Therefore, these progress reports are insufficient to establish the claim.

OWCP also received an undated letter on May 31, 2019 by Dr. Rolens. Dr. Rolens indicated that appellant's left foot conditions "may have been caused by work activity or [they] may have aggravated a preexisting condition." The Board has held that medical opinions that suggest a condition "may" have been caused or aggravated by work activities are speculative or equivocal in character and have little probative value.¹⁷ As such, the letter received on May 31, 2019 is insufficient to establish appellant's claim.

¹³ *I.M.*, *supra* note 8; *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims *Causal Relationship*, Chapter 2.805.3e (January 2013); *see D.H.*, Docket No. 18-0072 (issued January 21, 2020).

¹⁵ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ *K.N.*, Docket No. 18-0060 (issued January 22, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁷ *M.L.*, *supra* note 11.

As appellant has not submitted rationalized medical evidence explaining the causal relationship between her left foot conditions and the accepted December 7, 2018 employment incident, the Board finds that 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 condition causally related to the accepted December 7, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 3, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board