

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

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**S.A., Appellant**

**and**

**DEPARTMENT OF THE ARMY, RED RIVER  
ARMY DEPOT, Texarkana, TX, Employer**

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**Docket No. 20-0458  
Issued: July 23, 2020**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On December 27, 2019 appellant filed a timely appeal from an August 30, 2019 merit decision and a November 20, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment; and (2) whether

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<sup>1</sup> The Board notes that, following the November 20, 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

OWCP properly denied appellant's request for a review of the written record pursuant to 5 U.S.C. § 8124(b) as untimely filed.

### **FACTUAL HISTORY**

On June 18, 2019 appellant, then a 38-year-old painter, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral plantar fasciitis due to factors of her federal employment, including prolonged standing on the balls of her feet while walking in a small space all day. She noted that she first became aware of her condition and realized that it was caused or aggravated by her employment on August 8, 2018. Appellant did not stop work.

In a June 19, 2019 development letter, OWCP noted that it had received no evidence in support of appellant's occupational disease claim. It informed her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion regarding her employment activities. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's employment duties, including comments from a knowledgeable supervisor regarding the accuracy of her statements. It afforded both parties 30 days to respond.

In an August 8, 2018 medical report, Dr. Mark Floyd, Board-certified in family medicine, noted that appellant was evaluated for bilateral foot pain. Appellant indicated that she could not recall injuring her feet and that her pain was worse when she got up in the morning and started walking. Dr. Floyd diagnosed bilateral plantar fasciitis and referred her to a podiatrist for further evaluation.

In medical reports dated from September 10 to October 8, 2018, Dr. Philip Hahn, a Board-certified podiatrist, noted that he had evaluated appellant with regard to her complaints of bilateral foot pain. Appellant informed him that she had been in pain for a while, and that standing all day at work caused her feet to hurt. Dr. Hahn observed that she presented with unstable foot posture with obvious structural deformities and noted that her narrow type foot structure limited the surface area for weight distribution. He diagnosed congenital pes planus of both feet and other enthesopathy of both feet. Dr. Hahn opined that appellant's primary problem was caused by her foot structure and long days of walking with heavy shoes on concrete at work.

In a March 15, 2019 physical therapy report, Sam Codemo, a physical therapist, provided a plan of care for appellant's bilateral plantar fasciitis.

In a March 25, 2019 medical report, John Howell, a physician assistant, diagnosed plantar fibromatosis of both feet, as well as carpal tunnel syndrome, right. He also noted that appellant requested completion of paperwork related to her hand and foot pain.

In medical reports dated from May 2 to June 27, 2019, Dr. Hahn noted that he had evaluated appellant for her bilateral foot pain and indicated that therapy initially improved her condition, but the pain ultimately returned. He diagnosed congenital pes planus of both feet; a contracture of both ankles; other enthesopathy of both feet; and hypertrophy of bone, right ankle and foot.

In a June 20, 2019 letter, the employing establishment controverted appellant's occupational disease claim. It asserted that the medical evidence submitted was insufficient to show that her bilateral plantar fasciitis was causally related to her employment duties.

In a June 27, 2019 attending physician's report (Form CA-20) Dr. Hahn checked a box marked "Yes" indicating that appellant had a preexisting physical impairment and he explained that her history of working long days standing on concrete and rubber floors, along with her narrow foot structure, caused the medial columns in her feet to collapse. He diagnosed bilateral plantar fasciitis and checked a box marked "Yes" indicating that her condition was caused or aggravated by her federal employment and reasoned that, due to her narrow foot structure, the long hours on her feet worsened her condition.

In response to OWCP's questionnaire appellant submitted a July 16, 2019 statement in which she described her contributing employment factors as standing on concrete and rubber floor mats for extended periods of time every day for 10 hours. She also asserted that she had not performed any additional activities outside of work that contributed to her condition.

By decision dated August 30, 2019, OWCP denied appellant's occupational disease claim finding that the evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment. It explained that she failed to submit a physician's opinion as to how her employment factors caused, contributed to, or aggravated her medical conditions.

Appellant continued to submit additional medical evidence including unsigned medical reports from Advanced Foot & Ankle Center of Texarkana, P.A. dated September 20 and 30, 2019, which noted her complaints of bilateral foot pain. In a letter dated September 20, 2019, Mr. Howell indicated that she developed plantar fasciitis due to standing on her feet and squatting down while in the performance of her work duties, which put stress on her plantar tendons.

On an appeal request form dated September 30, 2019, postmarked October 1, 2019, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated November 20, 2019, OWCP's Branch of Hearings and Review denied appellant's request for a review of the written record finding that it was untimely filed as it was not postmarked within 30 days of the issuance of the August 30, 2019 decision. After exercising its discretion, the Branch of Hearings and Review further found that the merits of the claim could equally well be addressed through the reconsideration process.

### **LEGAL PRECEDENT -- ISSUE 1**

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,<sup>3</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>4</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>5</sup>

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; (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 identified employment factors.<sup>6</sup>

To establish causal relationship between the condition, as well as any attendant disability claimed and factors of employment, the employee must submit sufficiently rationalized medical opinion evidence.<sup>7</sup> 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 factors identified by the claimant.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that the case is not in posture for decision.

In support of her claim appellant submitted medical evidence diagnosing bilateral plantar fasciitis and detailing treatment dating back to August 2018. The medical evidence provides consistent diagnoses and indicates that she described employment duties requiring standing and walking on concrete and rubber floor mats for extended periods of time, which caused pain to her feet.

Included in the medical evidence submitted was a June 27, 2019 Form CA-20 in which Dr. Hahn indicated that appellant's narrow foot structure was a preexisting physical impairment. He diagnosed bilateral plantar fasciitis and opined that her condition was caused or aggravated by her federal employment. In support of his opinion, Dr. Hahn explained that appellant's history of

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

<sup>4</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>5</sup> *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).

<sup>6</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>7</sup> *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

<sup>8</sup> *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *I.J.*, 59 ECAB 408 (2008).

long days on her feet working on concrete and rubber floors, along with her narrow foot structure, caused the medial columns in her feet to collapse due to continued exposure to strain. In medical reports dated from September 10, 2018 to June 27, 2019, he continued to opine that her unstable foot posture and narrow type foot structure, which limited the surface area for weight distribution, and the effect of long days of walking with heavy shoes on concrete for work, caused her diagnosed conditions.

Accordingly, the Board finds that the medical evidence from Dr. Hahn is sufficient to require further development of the medical evidence to see that justice is done.<sup>9</sup> Dr. Hahn is a Board-certified physician who is qualified in his field of medicine to render an opinion on the issue of causal relationship and he provided a comprehensive and convincing review of the medical record and case history. It is further found that he provided a pathophysiological explanation as to how the mechanism of the accepted employment factors was sufficient to cause the diagnosed conditions. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.<sup>10</sup> Following review of Dr. Hahn's medical evidence, it is found that his medical opinion is well rationalized and logical and is therefore sufficient to require further development of appellant's claim.

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>11</sup> OWCP has an obligation to see that justice is done.<sup>12</sup>

On remand OWCP shall refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts. Its referral physician shall provide a well-rationalized opinion as to whether her diagnosed medical conditions are causally related to the accepted employment factors. If the physician opines that the diagnosed conditions are not causally related to the factors of appellant's employment factors, he or she must explain with rationale how or why their opinion differs from that of Dr. Hahn. After such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.<sup>13</sup>

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<sup>9</sup> *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>10</sup> *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein).

<sup>11</sup> See *C.C.*, Docket No. 18-1453 (issued January 28, 2020); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>12</sup> See *B.C.*, Docket No. 15-1853 (issued January 19, 2016).

<sup>13</sup> In light of the Board's disposition of the first issue, the second is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 30, 2019 merit decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 23, 2020  
Washington, DC

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

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

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