

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

_____)	
A.T., Appellant)	
)	
and)	Docket No. 19-1972
)	Issued: June 25, 2020
U.S. POSTAL SERVICE, AVONDALE)	
GOODYEAR POST OFFICE, Goodyear, AZ,)	
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, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On September 27, 2019 appellant, through counsel, filed a timely appeal from a July 19, 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 19, 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish right foot and ankle conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On October 29, 2018 appellant, then a 31-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that she sustained tarsal tunnel syndrome and tenosynovitis due to factors of her federal employment that placed stress and pressure on her feet and ankles, which included standing, walking, and carrying packages on concrete surfaces all day. She indicated that she first became aware of her claimed conditions on August 20, 2018 and first realized their relation to factors of her federal employment on September 19, 2018. On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on August 29, 2018.

An August 28, 2018 referral note by Dr. Jose Pierrend, Board-certified in family medicine, provided a diagnosis of intractable right heel pain.

A September 25, 2018 work status note by Dr. Paul Ledesma, a Board-certified podiatrist, provided a diagnosis of tarsal tunnel syndrome and right ankle tenosynovitis. Dr. Ledesma indicated that appellant would return to work “within the next six months or sooner.” He noted that her treatment plan included injection therapy, physical therapy, and wearing a controlled ankle movement (CAM) boot.

An undated letter from B.W., appellant’s supervisor, indicated that appellant often mentioned exercising at a gym and recently submitted leave slips for participating in a five kilometer race. In a subsequent letter, she also indicated that for the past several months appellant had worked an average of 4.5 to 5 hours daily and spent an average of 2 hours daily at the office casing mail, sorting parcels, and loading vehicles. B.W. also noted that appellant’s duties included assisting other carriers, but that she had not done so for the past few months. She indicated that while she became aware of appellant’s injury on September 20, 2018, she was not informed that it was possibly employment related until October 30, 2018.

An undated statement from appellant indicated that she started to feel soreness and pain in her heel that radiated into her ankle. When her symptoms worsened she first saw her primary care physician in August 2018 and then went to Dr. Ledesma who diagnosed tarsal tunnel syndrome and right ankle tenosynovitis. Appellant noted that he treated her injury and then released her to return to work on September 19, 2019 as a trial, but upon return to her employment duties she was in significant pain from prolonged walking, standing, and handling heavy containers. She indicated that she then informed her supervisor of her symptoms and was again treated by Dr. Ledesma on September 20, 2019. Appellant listed her employment duties as casing mail, delivering and collecting mail along a prescribed route in a vehicle, loading and unloading mail trays weighing as much as 70 pounds, prolonged standing, walking, bending, and reaching, and handling mail containers weighing up to the maximum allowable weight. She indicated that she did not have a history of foot, heel, ankle, or leg injuries, and she noted that she exercised regularly. Appellant also indicated that she had worked for the employing establishment for three years and worked six days a week. She described a typical day as including casing mail for a few hours and then loading the mail into her vehicle and spending 4 to 10 hours delivering the mail. Appellant

explained that she made 16 official stops which required that she climb in and out of her vehicle and walk back and forth on a concrete surface to deliver the mail from her vehicle into mailboxes. She noted that she also exited her vehicle between stops to deliver packages weighing up to 70 pounds directly to customers' doors. Appellant then returned undeliverable mail to the employing establishment and assisted other carriers.

In October 31, 2018 controversion letters, the employing establishment contended that appellant had not established fact of injury or causal relationship.

An October 2, 2018 work status note by Dr. Ledesma repeated appellant's diagnoses of tarsal tunnel syndrome and right ankle tenosynovitis and indicated that she could return to work on October 3, 2018 with restrictions and would continue with her treatment plan. Dr. Ledesma continued to provide work status notes recommending that she work with restrictions.

In a November 1, 2018 development letter, OWCP informed appellant that additional evidence was required to establish her cumulative injury claim. It advised her of the type of factual and medical evidence necessary and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence.

In an August 22, 2018 medical report, Dr. Pierrend indicated that appellant complained of piercing and sharp heel pain which started the week prior and was worsening. Appellant noted that there was no precipitating injury and indicated that her pain was aggravated by walking and standing. Dr. Pierrend reviewed her medical history and conducted a physical examination which revealed normal results. He diagnosed intractable right heel pain and indicated that he suspected appellant had calcaneal spurs.

Appellant's August 22, 2018 calcaneus x-rays were interpreted by Dr. Edward Urbanik, a Board-certified radiologist, as within normal limits.

In an August 30, 2018 report, Dr. Ledesma noted that appellant presented with right foot and ankle pain that started in her heel and radiated up her leg. Appellant stated that she experienced this pain for the past four weeks and noted that it had increased over the past few days and she was having trouble walking. She indicated that she was unsure why her pain started, and Dr. Ledesma noted that she worked on her feet all day as a mail carrier. Appellant also indicated that she had no relevant medical history, and a physical examination revealed pain with provocation over the right tarsal tunnel and medial calcaneal nerve, positive Tinel's sign over the posterior tibial nerve, and pain in the flexor hallucis longus muscle, plantar fascia, and the posterior tibial tendon in the right foot and ankle. Increased pronation during midstance and eversion of the heel's position in stance were also noted. X-rays of appellant's heel revealed normal results and an ultrasound of the right plantar fascia revealed minimal thickening and mild hypoechoic signal. Dr. Ledesma diagnosed right ankle tenosynovitis, pain and contracture, right leg tarsal tunnel syndrome, entrapment of the medial calcaneal nerve, and right foot plantar fasciitis.

In a September 11, 2018 report, Dr. Ledesma indicated that appellant continued to complain of right heel and ankle pain. He conducted a physical examination, repeated his previous diagnoses, and recommended the additional treatments of injection therapy and a CAM boot. Dr. Ledesma also recommended postponing appellant's return to work for at least one week. In a September 18, 2018 report, he indicated that her pain was improving, and he instructed that she could return to work on September 19, 2018 without restrictions.

Dr. Ledesma, in a September 20, 2018 report, indicated that appellant attempted to return to work, but experienced significant pain in her right foot that intensified to the point that she could “not put much pressure on it.” He repeated his previous diagnoses and recommended that she receive additional treatments and diagnostic imaging and remain off work.

A September 20, 2018 magnetic resonance imaging scan of appellant’s right-side lower extremity joints, interpreted by Dr. Janet Martin, Board-certified in radiology, revealed a small accessory peroneus quartus, a talar body small fibrosynovial cyst, and no additional ligament injury.

In an October 9, 2018 report, Dr. Ledesma indicated that appellant continued to present with right ankle and foot pain. He conducted a physical examination which additionally revealed pain with provocation of the tibial nerve within appellant’s right calf, and he additionally diagnosed a right tibial nerve lesion.

In an October 16, 2018 report, Michael Compton, a nurse practitioner, indicated that appellant presented with right foot pain and back pain. He conducted a physical examination and indicated that she had symptoms consistent with tarsal tunnel syndrome and plantar fasciitis. Appellant continued to follow up with Mr. Compton through the end of October 2018.

An October 24, 2018 electromyogram and nerve conduction velocity study, interpreted by Dr. Luke Garcia, an osteopath Board-certified in physical medicine and rehabilitation, revealed right superficial peroneal sensory nerve mononeuropathy and right sural sensory nerve mononeuropathy. Dr. Garcia diagnosed tarsal tunnel syndrome.

An October 2018 position description for a rural carrier associate listed the duties of appellant’s position as including sorting mail, loading mail into a vehicle, delivering mail along a prescribed route while driving a vehicle, returning undeliverable mail, and carrying parcels weighing up to 70 pounds.

On November 27, 2018 appellant completed OWCP’s questionnaire and provided a narrative statement explaining that she had not run in the recent five kilometer races she attended. She stated that her job aggravated her tarsal tunnel syndrome and tenosynovitis. Appellant also noted that she was never instructed to ask for assistance with carrying packages over 35 pounds, and that her gym membership was canceled in 2017. She also included documentation in support of her statements.

By decision dated January 24, 2019, OWCP denied appellant’s occupational disease claim finding that the evidence of record was insufficient to establish causal relationship between her diagnosed conditions and her accepted factors of federal employment.

On February 19, 2019 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. Appellant subsequently submitted additional medical evidence.

A January 21, 2019 operative report by Dr. Ledesma indicated that he performed an open decompression and neurolysis of the tarsal tunnel and a flexor tenolysis with synovectomy of the right ankle.

In a May 7, 2019 letter Dr. Ledesma indicated that he had treated appellant for her right heel and ankle pain since August 30, 2018. He opined that, upon reviewing her treatment and her weight-bearing activities at home and at her job, he determined that her foot pain was the result of compensatory actions related to her physical activities at work. Dr. Ledesma opined that it was more likely than not that the physical demands at work, as set forth in appellant's job description and in her own words, contributed to her tarsal tunnel/plantar fasciitis.

On June 10, 2019 an OWCP hearing representative conducted an oral hearing.

In a June 28, 2019 controversion letter, the employing establishment suggested that appellant likely spent more time on her feet in her previous jobs than in her current position. It additionally noted that potential preexisting conditions that had not been reviewed could have contributed to her foot conditions.

In a June 18, 2019 report, Dr. Ledesma noted that appellant presented with right foot pain and indicated that she was experiencing numbness in her foot when driving due to pedal manipulation. Dr. Ledesma conducted a physical examination and continued to diagnose right ankle pain and contracture, tarsal tunnel syndrome, and tenosynovitis of the right foot flexor hallucis longus. He opined that appellant's pathophysiology of her work duties such as lifting and carrying objects up to 70 pounds on a regular basis in and out of her work vehicle increased the strain and stress on her feet, which caused or exacerbated her tarsal tunnel syndrome and tendinitis. Dr. Ledesma explained that her foot pathology was caused by her bearing of weight greater than her own body weight. He further opined that the repetitive nature of appellant's applying pressure to her foot while driving a vehicle on a mail route "added to the source of the pathology and ultimately tarsal tunnel syndrome."

By decision dated July 19, 2019, an OWCP hearing representative denied modification of the January 24, 2019 OWCP decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 filed within the applicable time limitation of FECA,⁵ that an injury was sustained while 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.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors

⁴ *Supra* note 2.

⁵ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

⁷ *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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.⁸

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁹ 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 be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹⁰ 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.¹¹

In a case in which 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.¹²

ANALYSIS

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

In support of her claim, appellant submitted a series of medical reports by Dr. Ledesma from August 2018 through June 2019 which provided a history of injury, physical examination findings, a review of diagnostic tests, and medical diagnoses. Dr. Ledesma, in his June 18, 2019 medical report, indicated that she presented with right foot pain and experienced numbness in her foot when driving, which she stated was due to pedal manipulation. He reviewed appellant's medical history, conducted a physical examination, diagnosed right ankle pain and contracture, tarsal tunnel syndrome, and tenosynovitis of the right foot, and explained the mechanism of injury.¹³ Dr. Ledesma opined that her pathophysiology of her work duties such as lifting and carrying objects up to 70 pounds on a regular basis in and out of her work vehicle increased the strain and stress on her feet, which caused or exacerbated her tarsal tunnel syndrome and tendonitis. He also opined that the repetitive nature of her applying pressure to her foot while driving a vehicle on a mail route "added to the source of the pathology and ultimately tarsal tunnel syndrome."

⁸ *M.S.*, Docket No. 18-1554 (issued February 8, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *L.D.*, *id.*; *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² 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).

¹³ *R.S.*, Docket No. 19-1939 (issued May 6, 2020).

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.¹⁴

Dr. Ledesma is a Board-certified podiatrist who is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship, and he provided a comprehensive understanding of the claimed mechanism of injury. The Board finds that, although his June 18, 2019 medical report is insufficiently rationalized to meet appellant's burden of proof to establish her claim, it is relevant evidence in support of her claim, as it explains a physiological process by which her accepted factors of federal employment could have caused or aggravated her diagnosed foot and ankle conditions. Dr. Ledesma's June 18, 2019 medical report therefore raises an uncontroverted inference of causal relation between appellant's claimed right ankle and foot conditions and the accepted factors of her federal employment. Further development of appellant's claim is therefore required.¹⁵

On remand OWCP shall prepare a statement of accepted facts setting forth the employment factors which have been established and refer her to an appropriate second opinion physician for an examination and a rationalized medical opinion as to whether her accepted employment factors either caused or aggravated her right foot and ankle conditions.¹⁶ If the second opinion physician disagrees with the pathophysiological explanation provided by Dr. Ledesma, he or she must provide a fully-rationalized explanation explaining why Dr. Ledesma's opinion is unsupported. After this and other such further development deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹⁴ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020).

¹⁵ *See K.T.*, Docket No 19-1436 (issued February 21, 2020).

¹⁶ *See supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the July 19, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: June 25, 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