

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

\_\_\_\_\_  
**L.B., Appellant**

**and**

**DEPARTMENT OF HOMELAND SECURITY,  
U.S. CITIZENSHIP & IMMIGRATION  
SERVICES, Philadelphia, PA, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 20-0214  
Issued: June 22, 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  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 5, 2019 appellant filed a timely appeal from an October 9, 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.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a right lower extremity condition causally related to the accepted May 9, 2019 employment incident.

**FACTUAL HISTORY**

On June 25, 2019 appellant, then a 63-year-old immigration services assistant, filed a traumatic injury claim (Form CA-1) alleging that on May 9, 2019 she fractured her right ankle

---

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

when she rolled her right foot after stepping down from a ladder while in the performance of duty. She explained that following the incident she was able to walk back to her desk and subsequently sought medical treatment on May 21, 2019. Appellant indicated that she followed up with her doctor on May 28, 2019 and underwent a magnetic resonance imaging (MRI) scan which revealed a fractured right ankle. She did not stop work.

On May 13 and 21, and July 23 and 29, 2019 Dr. Rhoneise Barnett-Smith, a Board-certified family practitioner, noted that appellant was seen in her office and that she intermittently held appellant off work through August 12, 2019.

In a May 28, 2019 medical note, Dr. Raymond A. DiPretoro, Jr., a podiatrist, noted that appellant was seen in his office on that date. He indicated that she needed to wear a removable cast at all times and that she should be allowed to stay off her foot as much as possible.

On August 12, 2019 Dr. DiPretoro diagnosed nondisplaced fracture of the lateral malleolus of the right fibula, and right ankle sprain. He released appellant to return to light-duty work on August 20, 2019.

In an August 29, 2019 development letter, OWCP noted that when appellant's claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work. It, therefore, administratively approved payment of a limited amount of medical expenses without formally considering the merits of the claim. OWCP advised appellant that her claim had now been reopened for consideration of the merits, and informed her of the deficiencies of her claim. It requested that she provide additional medical evidence from her physician and afforded her 30 days to respond.

On May 21, 2019 Dr. DiPretoro examined appellant due to right ankle pain occurring over two weeks. He reported no history of injury or trauma. Dr. DiPretoro diagnosed primary osteoarthritis of the right ankle and foot; idiopathic gout, right ankle; pain in the right lower leg; and sprain of other ligament of the right ankle. On May 28 and June 13, 2019 he noted that appellant continued to experience right ankle pain. Dr. DiPretoro again noted that she had no history of injury or trauma. On July 29, 2019 he diagnosed nondisplaced fracture of the lateral malleolus of the right fibula as demonstrated on x-ray. Dr. DiPretoro also diagnosed sprain of the right ankle, synovitis and tenosynovitis of the right ankle and foot, and pain in the right lower leg. He found an unresolved stress fracture of the right fibula.

On June 1, 2019 appellant underwent a right ankle MRI scan which demonstrated subacute distal fibular fracture with periosteal reaction and marrow edema. On June 3, July 22, August 23, and September 16, 2019 she underwent a right ankle x-ray which demonstrated a healing fracture of the distal right fibula.

In an August 27, 2019 note, Dr. DiPretoro reported that appellant's right ankle symptoms had improved. He released appellant to return to full-duty work on that date.

In an attending physician's report (Form CA-20) dated September 9, 2019, Dr. DiPretoro diagnosed right ankle injury. He noted that appellant's June 2, 2019 MRI scan demonstrated a distal fibular fracture of the right ankle. Dr. DiPretoro indicated by checking a box marked "Yes" indicating that the condition was caused or aggravated by an employment activity. He further

noted that appellant had no history of previous ankle injury prior to the May 9, 2019 accident. Dr. DiPretoro completed a note on September 16, 2019 and reported that her right ankle pain was likely secondary to an unresolved fracture of the right fibula which demonstrated continued periosteal reaction with healing.

By decision dated October 9, 2019, OWCP found that appellant had not established causal relationship between her accepted May 9, 2019 employment incident and a claimed right lower extremity condition.

### **LEGAL PRECEDENT**

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>2</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>3</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>4</sup>

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.<sup>5</sup> The second component is whether the employment incident caused a personal injury.<sup>6</sup>

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 factor(s) identified by the employee.<sup>8</sup> The weight of the medical evidence

---

<sup>2</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>3</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>4</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>5</sup> *T.M.*, Docket No. 19-0380 (issued June 26, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right lower extremity condition causally related to the accepted May 9, 2019 employment incident.

In support of her claim, appellant submitted a series of reports from Dr. DiPretoro, diagnosing multiple right lower extremity conditions. In notes dated May 21, 28, and June 13, 2019, Dr. DiPretoro indicated that appellant had no history of trauma. However, these reports do not specifically address whether the May 9, 2019 employment incident either caused or contributed to appellant's diagnosed conditions. As these records do not contain an opinion on causal relationship, they are of no probative value and are insufficient to meet appellant's burden of proof.<sup>10</sup>

In his September 9, 2019 Form CA-20, Dr. DiPretoro referenced a May 9, 2019 incident and indicated by checking a box marked "Yes" that appellant's right ankle fracture was caused or aggravated by this employment activity. He further noted that she had no history of previous ankle injury prior to the May 9, 2019 accident. The Board has held that when a physician's opinion on causal relationship consists only of an affirmative checkmark on a form, without a proper factual background and medical rationale, the opinion is of diminished probative value.<sup>11</sup> Moreover, the mere fact that symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between a diagnosed condition and employment factors.<sup>12</sup> As such, the Board finds that Dr. DiPretoro's September 9, 2019 report is of diminished probative value.<sup>13</sup>

Appellant also provided a series of medical notes from Dr. Barnett-Smith indicating that appellant was unable to work. As noted above, medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>14</sup> Dr. Barnett-Smith's medical evidence, therefore, is insufficient to establish appellant's burden of proof.

The remaining medical evidence consists of a series of right ankle x-rays and other diagnostic studies. Diagnostic tests, standing alone, lack probative value as they do not provide an opinion on causal relationship between appellant's accepted employment incident and the

---

<sup>9</sup> *D.R.*, Docket No. 19-0954 (issued October 25, 2019); *James Mack*, 43 ECAB 321 (1991).

<sup>10</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>11</sup> *S.W.*, Docket No. 18-0721 (issued November 6, 2018); *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

<sup>12</sup> *A.S.*, Docket No. 19-1955 (issued April 9, 2020).

<sup>13</sup> *C.T.*, Docket No. 20-0020 (issued April 29, 2020).

<sup>14</sup> *Supra* note 10.

diagnosed conditions.<sup>15</sup> As such, these diagnostic studies are insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing a medical condition causally related to the accepted May 9, 2019 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

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 right lower extremity condition causally related to the accepted May 9, 2019 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 9, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 2020  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>15</sup> *J.M.*, Docket No. 17-1688 (issued December 13, 2018).