

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

_____)	
T.M., Appellant)	
)	
and)	Docket No. 19-1566
)	Issued: March 6, 2020
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Knoxville, TN, Employer)	
_____)	

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
JANICE B. ASKIN, Judge

JURISDICTION

On July 16, 2019 appellant filed a timely appeal from a May 10, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the May 10, 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 factors of her federal employment.

FACTUAL HISTORY

On February 14, 2019 appellant, then a 37-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed a stress fracture in her left foot due to factors of her federal employment including excessive walking. She indicated that she first became aware of the condition on July 1, 2017 and first attributed the condition to factors of her federal employment on July 18, 2017. Appellant noted that she delayed filing her occupational disease claim as she was told that she would be dismissed if she filed a claim within the first 90 days of her employment. She stopped work on February 13, 2019.

In a July 18, 2017 report, Dr. James Engblom, a podiatrist, noted that appellant had begun work at the employing establishment and walked several miles a day on concrete. He related that appellant reported having some pain and swelling of the dorsum of the left foot since July 12, 2017. Dr. Engblom reviewed anteroposterior, oblique, and lateral view x-rays of appellant's left foot and found some internal cortical changes to the distal and midshaft levels of metatarsals 2 and 3. He diagnosed a stress fracture of the left foot and provided a referral for a pneumatic boot walker. Dr. Engblom recommended that appellant use the pneumatic boot outside of work and rest as much as possible.

In a March 4, 2019 narrative statement, appellant indicated that her foot pain began in July 2017. She related that she was diagnosed with a stress fracture of the left foot on multiple occasions despite wearing a walking boot. Appellant noted that as the walking boot was not healing the stress fracture and as all other options had been exhausted, she was scheduled for surgery. She alleged that her stress fracture of the left foot was caused by the excessive walking required to perform her job function and duties. Appellant reported that she walked on concrete as well as the hard floor of the employing establishment's building for 8 to 12 hours a day up to 7 days a week.

In a development letter dated March 18, 2019, 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.

Thereafter, OWCP received appellant's response to its development questionnaire dated April 1, 2019. Appellant noted that she had been working as a mail handler since May 2017 and that her employment duties required excessive walking. She also indicated that she had no left foot injury or medical condition prior to her federal employment.

OWCP also received a series of medical reports. In an August 29, 2017 report, Dr. Engblom noted appellant's concern that she could not wear her walking boot at work for fear of losing her position. He examined anteroposterior, oblique, and lateral view x-rays of appellant's

left foot and found no acute interval changes. Dr. Engblom opined that appellant remained symptomatic and again diagnosed a stress fracture of the left foot.

In a September 13, 2017 report, Dr. Zachary Jumper, a Board-certified diagnostic radiologist, examined a magnetic resonance imaging (MRI) scan of appellant's left foot. He compared the MRI scan with August 29, 2017 x-rays of appellant's left foot and found no fracture line or full-thickness tendon tearing. Dr. Jumper indicated that no acute stress fracture was observed.

In an October 9, 2017 report, Dr. Engblom reviewed anteroposterior, oblique, and lateral view x-rays of appellant's left foot and the September 13, 2017 MRI scan and found no obvious stress fracture. He opined that appellant had an inferiorly positioned cuboid and instability of the left foot joint. Dr. Engblom diagnosed cuboid subluxation syndrome of appellant's left foot.

In an April 17, 2018 report, Dr. Engblom noted appellant's complaints of increased pain in her left foot. He reviewed an x-ray of appellant's left foot and noted that it was unremarkable. Dr. Engblom examined the cuboid, third metatarsal, and cuneiform of appellant's left foot and diagnosed a stress fracture of the left foot.

In a June 12, 2018 report, Dr. Engblom saw appellant for a recheck of her left foot stress fracture. He examined x-rays of appellant's left foot and indicated that it seemed to be improved. Dr. Engblom noted that appellant currently had isolated pain to the fourth and fifth metatarsal cuboid articulation.

In an August 17, 2018 report, Dr. Engblom noted appellant's complaints of continued, daily left foot pain. He reviewed x-rays of appellant's left foot and found no discernable changes. However, on examination Dr. Engblom noted that appellant had cuboid and third cuneiform pain consistent with a stress reaction fracture. He advised appellant that surgery was likely the best long-term option and discussed the procedure with her.

In a January 2, 2019 report, Dr. Engblom noted that appellant reported having constant left foot pain with intermittent worsening. Appellant related that her left foot pain was keeping her up at night and was causing her terrible pain at work. Dr. Engblom reviewed x-rays of appellant's left foot and found sclerosis to the dorsal margin of the cuboid when compared to prior studies. He noted that the findings were consistent with a chronic stress reaction fracture to the cuboid and third cuneiform of appellant's left foot. Dr. Engblom further found distal stressing of the fourth and fifth metatarsal cuboid joint and some increased sclerosis to the cuboid. He recommended surgery if appellant remained symptomatic.

In a January 30, 2019 report, Dr. Engblom reported that he saw appellant to discuss possible surgical intervention. He reviewed x-rays of her left foot and found increased sclerosis to the margins of the third cuneiform, but no acute signs of fracture or advanced degenerative changes. Dr. Engblom noted that appellant remained symptomatic. He informed her about the possible benefits of surgery and discussed potential complications.

By decision dated May 10, 2019, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a causal relationship between her left foot condition and the accepted factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶

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.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ 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 claimant.⁹ 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.¹⁰

³ *Supra* note 1.

⁴ *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ 20 C.F.R. § 10.115; *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ See *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *E.W.*, *supra* note 4; *Gary L. Fowler*, 45 ECAB 365 (1994).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left foot condition causally related to the accepted factors of her federal employment.

In support of her claim, appellant submitted a medical report from her treating podiatrist, Dr. Engblom, dated July 18, 2017. Dr. Engblom diagnosed a stress fracture of the left foot and indicated that she reported having pain and swelling in her left foot due to extensive walking. Although he identified that appellant's duties as a mail handler required her to walk several miles per day on concrete, he failed to directly relate her stress fracture to the accepted factors of her federal employment. The Board has held that 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.¹¹ The Board has held that a medical opinion must provide an explanation of how specific employment factors physiologically caused or aggravated the diagnosed conditions.¹² Without offering his own rationalized medical opinion explaining causal relationship, this report from Dr. Engblom is insufficient to establish appellant's claim.¹³

In his remaining medical reports, Dr. Engblom provided diagnoses and possible treatment options related to appellant's left foot condition. However, he did not offer an opinion on causal relationship in any of these reports. As previously noted, 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.¹⁴ These reports are, therefore, insufficient to establish appellant's claim.

Appellant also submitted a diagnostic imaging study in the form of a left foot MRI scan report from Dr. Jumper dated September 13, 2017. The Board has held that a diagnostic study lacks probative value on the issue of causal relationship as Dr. Jumper does not provide an opinion on causal relationship between accepted employment factors and a claimant's diagnosed conditions.¹⁵ As such, this evidence is insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence explaining the causal relationship between her diagnosed left foot condition and the accepted factors of her federal employment, 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.

¹¹ *L.C.*, *supra* note 5; *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹² *See A.P.*, Docket No. 18-1690 (issued December 12, 2019).

¹³ *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *see A.B.*, Docket No. 16-1163 (issued September 8, 2017).

¹⁴ *L.C.*, *supra* note 5; *Y.S.*, Docket No. 18-0366 (issued January 22, 2020).

¹⁵ *L.C.*, *supra* note 5; *J.F.*, *supra* note 8.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left foot condition causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the May 10, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 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