

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

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<b>T.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0712</b>
	)	<b>Issued: November 10, 2020</b>
<b>U.S. POSTAL SERVICE, WARNER ROBINS</b>	)	
<b>POST OFFICE, Warner Robins, GA, Employer</b>	)	
_____	)	

*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  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On February 11, 2020 appellant filed a timely appeal from a January 13, 2020 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 an injury in the performance of duty, as alleged.

**FACTUAL HISTORY**

On September 7, 2019 appellant, then a 58-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she experienced lower right leg pain due to factors of her federal employment. She indicated that she felt pain when carrying packages to a customer's door,

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

and the pain worsened as the day continued. Appellant noted that she first became aware of her condition and first realized its relation to factors of her federal employment on August 28, 2019. She stopped work on September 6, 2019.

In a September 7, 2019 medical note, Jonathan Kent, a certified nurse practitioner, provided work restrictions pending results from a bone scan. A bone scan report of even date, performed by Dr. Timothy R. Stapleton, a Board-certified orthopedic surgeon, demonstrated anterior shin splints.

In a September 18, 2019 medical note, Dr. Stapleton diagnosed right tibial stress fracture and advised appellant to remain off work.

In a September 26, 2019 development letter, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation as to how her work activities caused, contributed to, or aggravated her claimed medical condition. It also enclosed a questionnaire for her completion which posed various questions regarding her work duties. In a separate development letter of even date, OWCP also requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor on the accuracy of appellant's statements and a copy of an official position description. It afforded both parties 30 days to provide the requested evidence.

In a September 7, 2019 medical report, Mr. Kent noted that appellant typically walked six to eight miles per day for her work. He reported that appellant developed right anterior lower leg pain in the distal third of the lower leg. Mr. Kent noted that her pain was initially worse with flexion and extension of the foot, but was getting progressively worse since August 20, 2019. He diagnosed shin splints and tibialis anterior tendinitis.

A September 11, 2019 bone scan report by Dr. L. Daniel Strawn, a Board-certified radiologist, demonstrated a subtle area of asymmetric tracer accumulation in the lower right anterior leg. Dr. Strawn noted that the uptake on the bone scan report appeared to be more likely in the lower anterior leg soft tissues than the tibia itself.

In a September 18, 2019 medical report, Dr. Stapleton indicated that he had not seen appellant following a right knee arthroscopy in 2018. He noted that she reported that she began experiencing pain in her right shin area since approximately August 20, 2019, and that she was no longer able to walk six to eight miles a day that she typically walked. Dr. Stapleton diagnosed right tibial stress fracture and ordered physical therapy. He indicated that appellant's lower leg condition was work related.

The employing establishment, in an October 1, 2019 letter, controverted appellant's claim asserting that her injury occurred outside of the employing establishment as she provided no medical documentation stating that her injury occurred on the job and failed to notify her supervisor of her injury for 11 days. It further noted that she also had not provided a time and place of her injury.

In an October 2, 2019 medical report, Steven Kelham, a certified physician assistant, noted that appellant returned for a follow-up for right lower leg pain. He indicated that appellant performed a lot of physical labor for her work, including walking 6 to 10 miles each day, lifting

heavy boxes, and loading trucks. Mr. Kelham noted that appellant was off work since September 7, 2019. He diagnosed right lower leg stress fracture.

In an October 2, 2019 medical note, Dr. Stapleton again diagnosed right tibial stress fracture and advised that appellant could return to work on October 7, 2019. In an attending physician's report (Form CA-20) of even date, he again diagnosed right tibial stress fracture and placed appellant on light-duty work. Dr. Stapleton noted the date of injury as August 28, 2019 and checked a box marked "Yes" indicating that her diagnosed condition was work related. In a duty status report (Form CA-17) of even date, he reported that appellant noticed pain in her lower right leg while carrying packages from her truck to a door. Dr. Stapleton again diagnosed right tibial stress fracture and advised that appellant could return to work on October 7, 2019 with restrictions.

In an October 4, 2019 response to OWCP's development questionnaire, appellant indicated that the factors of her employment that she believed contributed to her condition included repeatedly squatting and lifting heavy packages, climbing in and out of a long life vehicle (LLV) to load packages, as well as, walking up to 50 pounds of packages from her LLV to a door of business or homes on uneven surfaces. She explained that she loaded and unloaded, and then walked with packages for approximately three hours per day, performing about 160 dismounts each day, which required constantly stepping down from and back into her LLV. Appellant noted that she often walked on uneven surfaces for at least one hour every day. She further explained that her only activities outside of her work were volunteering at a fellowship for a clerical work, light house cleaning, and cooking.

In an October 9, 2019 medical report, Dr. Stapleton indicated that appellant was still recovering from her right tibial stress fracture and repeated that appellant's condition was work related. He noted that appellant had walked between 6 to 10 miles per day while working at the employing establishment. Dr. Stapleton explained that right tibial stress fracture typically took a long time to heal, noting that her preexisting intra-articular damage from 2013 might have slowed down her recovery. He additionally diagnosed pain in lower limb. In a medical note of even date, Dr. Stapleton further diagnosed pain in the right leg and indicated that appellant could return to work on October 23, 2019 without restrictions.

In an undated statement, appellant's supervisor, B.D., indicated that she conducted an investigative interview with appellant on September 7, 2019. During this interview, appellant alleged that she started experiencing pain in her right lower leg while she was carrying packages on August 28, 2019. B.D. noted that appellant waited days before reporting her injury and failed to respond to several questions including, "how, when, where, and what had happened to her leg." She indicated that appellant had explained that her injury was not a result of an accident, but rather was an occupational injury caused by work on uneven surfaces and stress over time. B.D. noted that appellant continued to work for 11 days following the development of her condition without reporting her injury. She claimed in conclusion that appellant was not injured on the job, but instead injured herself outside of the employing establishment.

On October 11, 2019 the employing establishment submitted a rural carrier position description, which included: sorting, receiving, and signing for mail; loading mail in a vehicle;

delivering mail to customers along a prescribed route and on a regular schedule by a vehicle; and picking up mail from customers' roadside boxes.

By decision dated January 13, 2020, OWCP denied appellant's occupational disease claim finding that the evidence of record was insufficient to establish that the alleged events occurred as described or that she sustained a diagnosed medical condition. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim, including 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 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>

OWCP's regulations define an occupational disease as a condition produced by the work environment over a period longer than a single workday or shift.<sup>6</sup> 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 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>7</sup>

The employee's burden of proof includes the submission of a detailed description of the employment factors or conditions, which he or she believes caused or adversely affected a condition for which compensation is claimed.<sup>8</sup>

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<sup>2</sup> *Supra* note 1.

<sup>3</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> 20 C.F.R. § 10.5(q).

<sup>7</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *T.W.*, Docket No. 18-0788 (issued July 22, 2019); *J.C.*, Docket No. 16-1663 (issued January 18, 2017); *Lori A. Facey*, 55 ECAB 217 (2004).

## ANALYSIS

The Board finds that appellant has met her burden of proof to establish fact of injury.

Appellant claimed that she developed a lower right leg condition due to performing repetitive work duties. She asserted that her duties included repeatedly squatting and lifting heavy packages, climbing in and out of an LLV to load packages, as well as, carrying packages weighing up to 50 pounds from her LLV on uneven surfaces. Appellant contended that she performed her work duties for many hours every day, performing about 160 dismounts per day. Although she reported to her supervisor that she first noticed pain in her lower right leg while carrying packages on August 28, 2019, she explained that her injury was not traumatic, but rather an occupational injury being caused by walking on uneven surfaces and stress over time.

The Board finds that the evidence of record is sufficient to establish that appellant's work duties included repeatedly lifting heavy packages, loading and unloading an LLV, and walking on uneven surfaces to deliver packages, as well as picking up mail or packages from customers' roadside boxes. The Board notes that she was consistent in reporting the essential nature of her work duties and the employing establishment has not disputed her description of the type of duties she performed, but rather disputed whether she sustained a traumatic injury while in the performance of her duty. The Board has held that an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>9</sup> The employing establishment presented evidence showing that appellant did, in fact, perform the types of job tasks as alleged, albeit not to the same extent as alleged. Therefore, the Board finds that appellant's allegations regarding the nature of her work duties have not been refuted by strong or persuasive evidence and there are no inconsistencies sufficient to cast serious doubt on the type of duties she alleged she performed.<sup>10</sup>

The Board further finds that appellant has submitted sufficient medical evidence to establish a medical diagnosis in connection with her alleged employment injury. In a series of medical reports Dr. Stapleton diagnosed a tibial stress fracture in connection with appellant's claimed employment injury. The case record also demonstrates diagnoses shin splints and tibialis anterior tendinitis.

Therefore, the case shall be remanded to OWCP to determine whether there is causal relationship between the accepted factors of her federal employment and the diagnosed medical conditions.<sup>11</sup> After this and other such further development as may be deemed necessary, OWCP shall issue a *de novo* decision on the merits of this claim.

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<sup>9</sup> See *V.J.*, Docket No. 19-1600 (issued March 13, 2020); *Allen C. Hundley*, 53 ECAB 551 (2002).

<sup>10</sup> See generally *J.T.*, Docket No. 18-1170 (issued May 19, 2020); *T.A.*, Docket No. 19-1525 (issued March 4, 2020); *J.C.*, Docket No. 18-1803 (issued April 19, 2019); *L.S.*, Docket No. 13-1742 (issued August 7, 2014).

<sup>11</sup> *T.A.*, *id.*

**CONCLUSION**

The Board finds that appellant has met her burden of proof to establish fact of injury, but that the case is not in posture for decision on the issue of causal relationship.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 13, 2020 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 10, 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