United States Department of Labor
Employees' Compensation Appeals Board

M.K., Appellant	)	
	)	**Docket No. 21-0520**
and	)	**Issued: August 23, 2021**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Woodbury, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 18, 2021 appellant, through counsel, filed a timely appeal from a December 9, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider 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 issuance of the December 9, 2020 decision, appellant submitted additional evidence to OWCP. 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 expand the acceptance of her claim to include a bilateral foot condition causally related to her accepted employment injury.

FACTUAL HISTORY

On October 15, 2019 appellant, then a 57-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury as a result of her federal employment duties, which included walking for prolonged periods of time. She first became aware of her condition on March 28, 2019 and realized its relationship to her federal employment on September 25, 2019. Appellant stopped work following her claimed injury.

In a September 25, 2019 disability note, Dr. Wei Shen, an orthopedic surgeon, diagnosed bilateral metatarsalgia, left side worse, and placed appellant off work until October 16, 2019.

In an October 17, 2019 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit additional evidence and respond to its inquiries.

OWCP thereafter received medical evidence. In an additional medical note dated October 16, 2019 and a medical justification for light-duty form dated October 21, 2019, Dr. Shen reiterated his prior diagnosis of bilateral metatarsalgia. He released appellant to return to sedentary work with restrictions on October 21, 2019.

On November 5, 2019 appellant responded to OWCP's October 17, 2019 development letter. She noted that she had worked as a letter carrier for 13 years. Appellant related that her job duties included sorting and loading mail into her truck, and delivering mail. She walked eight miles on her route carrying heavy mailbags and parcels up and down stairs, eight hours per day, five days per week.

By decision dated November 26, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted employment factors.

OWCP subsequently received additional medical evidence. In a report dated May 1, 2020, Dr. Scott J. Koenig, an orthopedic surgeon, noted that appellant reported the history of injury as sudden onset of pain one year ago with no specific injury. He discussed examination findings and provided assessments of hammertoe of the left foot and Morton's neuroma of the second interspace of the left foot. Dr. Koenig opined that appellant's injury was a repetitive strain injury. He advised that appellant's complaints were consistent with, and the cause of her injury. Dr. Koenig concluded that appellant could return to modified-duty work with restrictions.

A June 18, 2020 left foot magnetic resonance imaging (MRI) scan report by Dr. Mark J. Decker, a diagnostic radiologist, provided impressions of tear of the second plantar plate from the proximal phalanx with plantar soft tissue edema and no fracture; scarring of the second and third webspace with no well-formed neuroma; and moderate arthrosis of the first metatarsophalangeal

(MTP) joint with mild arthrosis of metatarsal-sesamoid joints and impingement on the first webspace with scarring and distended bursa.

In reports dated September 25, 2019 through August 7, 2020, Dr. Shen noted that appellant walked approximately 8 to 10 miles per day as a mail carrier. He also noted her complaint of bilateral foot pain, especially on the left foot underneath the second MTP joint. Dr. Shen reexamined appellant's feet and reviewed bilateral foot x-rays. He restated his diagnosis of bilateral foot metatarsalgia. Dr. Shen also diagnosed plantar plate tear of the left second MTP joint. He continued to address appellant's work capacity and recommended that she undergo left second metatarsal Weil osteotomy and plantar plate repair.

On November 20, 2020 appellant, through counsel, requested reconsideration regarding the November 26, 2019 decision.

In support of her reconsideration request, appellant submitted an August 7, 2020 letter from Dr. Shen who reiterated appellant's work duties and his prior diagnoses of bilateral metatarsalgia, left side worse than right side, and plantar plate tear of the left second MTP joint. He opined that the diagnosed conditions were related to appellant's prolonged exposure to daily stress on the sole of both feet, particularly to the portions of the feet that were directly behind the toes, which were commonly referred to as the ball of the foot. Dr. Shen noted that metatarsal is inflammation of the foot at an area of the sole where there is an absorption of force with the hard surface of pavement, sidewalks, *etc.*, and is repetitive in nature. He related that a conservative estimate of the miles appellant walked at work was in excess of 1,500 miles per year or 19,500 miles over a 13-year career. Dr. Shen opined that her work condition could be the cause of her current complaints/ pathology. He further opined that appellant's current work schedule had aggravated and would continue to aggravate her pain and pathology of her condition.

OWCP, by decision dated December 9, 2020, set aside the November 26, 2019 decision in part and affirmed the decision in part. It found that the medical evidence of record was sufficient to establish that appellant's diagnosis of plantar plate tear of the left second MTP joint was causally related to the accepted factors of her federal employment. OWCP also found, however, that the medical evidence of record was insufficient to establish that the diagnosis of bilateral metatarsalgia was causally related to the accepted work factors as the diagnosis referred to pain which was not a compensable medical diagnosis.[4]

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[5]

[4] In a separate decision of even date, OWCP accepted appellant's claim for disorder of the left foot ligament (tear of the plantar plate ligament of the second MTP joint).

[5] *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[6] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment injury must be based on a complete factual and medical background.[7] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include a bilateral foot condition causally related to the accepted employment injury.

In an August 7, 2020 report, Dr. Shen noted that appellant walked approximately 8 to 10 miles as part of her regular work schedule. He diagnosed bilateral foot metatarsalgia and recommended foot surgery. Dr. Shen opined that the diagnosed condition was caused by the prolonged daily stress on the ball of appellant's feet. However, conversely, he also opined that appellant's work condition could be the cause of her current complaints/pathology. Dr. Shen's report is, therefore, of diminished probative value and insufficient to meet appellant's burden of proof to expand the accepted condition of her claim as he provided an inadequate as it was equivocal in nature regarding the cause of appellant's bilateral foot condition.[9]

Dr. Shen's remaining reports diagnosed bilateral metatarsalgia, and addressed appellant's need for surgery and her work capacity. However, these medical reports do not offer an opinion as to whether appellant's diagnosed condition and need for surgery were causally related to the accepted employment injury. 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.[10] Thus, the Board finds that Dr. Shen's reports are of no probative value on the issue of causal relationship and are insufficient to establish appellant's burden of proof.

Similarly, Dr. Koenig's May 1, 2020 report is insufficient to establish appellant's burden of proof. He provided assessments of hammertoe of the left foot and Morton's neuroma of the second interspace of the left foot, which he advised was a repetitive strain injury. While Dr. Koenig indicated that appellant related her history of injury as sudden onset of pain one year ago with no specific injury, he did not offer his own opinion as to the cause of appellant's

[6] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[7] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] *Id.*

[9] *See E.B.*, Docket No. 18-1060 (issued November 1 2018); *Leonard J. O'Keefe*, 14 ECAB 42 (1962). .

[10] *See J.M.*, Docket No. 19-1926 (issued March 19, 2021); *L.D.*, Docket No. 20-0894 (issued January 26, 2021); *T.F.*, Docket No. 18-0447 (issued February 5, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

condition.[11] As noted, a medical opinion that lacks an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[12] The Board finds, therefore, that Dr. Koenig's report is of no probative value on the issue of causal relationship and insufficient to meet appellant's burden of proof.

Dr. Decker's June 18, 2020 MRI scan report addressed appellant's left foot conditions. However, diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether an employment incident caused the diagnosed condition.[13]

As the medical evidence of record is insufficient to establish causal relationship between the additional bilateral foot condition and the accepted employment injury, the Board finds that appellant 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include a bilateral foot condition causally related to the accepted employment injury.

[11] *T.F., id.*

[12] *Supra* note 9.

[13] *C.H.,* Docket No. 20-0228 (issued October 7, 2020); *R.J., supra* note 4; *E.G.,* Docket No. 17-1955 (issued September 10, 2018).

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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