United States Department of Labor
Employees' Compensation Appeals Board

JAMES G. RANDAN, Appellant	)	
and	)	**Docket No. 19-1563**
	)	**Issued: March 12, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Huntington, WV, 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
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On July 2, 2019 appellant filed a timely appeal from a June 20, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether OWCP abused its discretion by denying appellant's request for authorization for left lower extremity surgery.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the June 20, 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.*

FACTUAL HISTORY

On June 30, 2017 appellant, then a 44-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 29, 2017 he stepped out of his truck onto a grass-covered hole and sprained his left ankle while in the performance of duty. OWCP accepted the claim for sprain of other ligament of the left ankle (initial encounter), sprain of the left foot, and sprain of calcaneofibular ligament of the left ankle. Appellant stopped work on June 29, 2017 and did not return. He was placed on the supplemental rolls from August 14 to December 9, 2017 and on the periodic rolls commencing December 10, 2017.

On August 2, 2017 appellant underwent a magnetic resonance imaging (MRI) scan of the left ankle which revealed sprains of the deltoid ligament and calcaneofibular ligament.

Appellant treated with Dr. Kevin Brown, a podiatrist specializing in foot and ankle surgery, from August 17 to November 13, 2017. Dr. Brown diagnosed sprain of the calcaneofibular ligament of the left ankle and disorder of ligament left ankle, noting that he was totally disabled. He recommended an elastic bandage, a controlled ankle movement boot, and physical therapy. Dr. Brown continued conservative treatment from December 28, 2017 to June 18, 2018 and noted minimal change in his condition. Appellant reported lumbar radiculopathy due to over compensation and gait abnormality due to the accepted left knee injury. On June 18, 2018 Dr. Brown continued to hold appellant off work pending examination of his back pain.

A left ankle MRI scan dated January 3, 2018 revealed no evidence of internal derangement and improvement of the tibiotalar joint effusion and subcutaneous edema.

Thereafter, OWCP referred appellant to a second opinion physician. In a July 27, 2018 report, Dr. Syed A. Zahir, a Board-certified orthopedic surgeon, recounted the history of injury of the left foot and diagnosed left ankle with a sprain of the left ankle calcaneofibular ligament. He opined that appellant's foot had healed almost completely and his accepted left foot and ankle injury required only local treatment, noting that he could perform full-time, light-duty work.

In reports dated July 17 to October 3, 2018, Dr. Brown diagnosed capsulitis, sprain of the calcaneofibular ligament of the left ankle, and disorder of the ligament of the left ankle and noted that appellant remained totally disabled from work.

OWCP determined that there was a conflict in medical opinion between Dr. Brown and Dr. Zahir, regarding level of disability and work restrictions. It referred appellant to Dr. E. Gregory Fisher, a Board-certified orthopedic surgeon, to resolve the conflict of opinion as the impartial medical examiner (IME).

In a January 17, 2019 report, Dr. Fisher diagnosed sprained ligament of the left ankle, sprain of the left foot, sprained calcaneofibular ligament of the left ankle, all resolved without residuals. He also diagnosed nonwork-related extreme obesity, irritable bowel syndrome, and acid reflux. Dr. Fisher noted that examination of the back, and neurologic examination of the lower extremities were normal. He found no objective findings of residuals of the accepted conditions. However, because of dull tension-like pain over the left foot and ankle on prolonged walking and standing, appellant was unable to perform the duties of his job as a letter carrier. In response to

OWCP's question as to whether the accepted conditions require continued medical treatment, Dr. Fisher opined that, appellant "does not require any further definitive treatment, except supportive care of over-the-counter anti-inflammatory medications as needed and slip-on athletic ankle support as needed." He noted that appellant could return to full-time, light-duty work.

In reports dated December 10, 2018 to February 7, 2019, Dr. Brown diagnosed Achilles tendinitis of the left lower extremity, capsulitis, sprain of the calcaneofibular ligament of the left ankle, and disorder of the ligament of the left ankle. He performed a subtalar injection and noted that appellant remained totally disabled from work. On February 7, 2019 Dr. Brown treated appellant for complaints of worsening left ankle pain. He diagnosed Achilles tendinitis of the left lower extremity, capsulitis, sprain of the calcaneofibular ligament of the left ankle, and disorder of the ligament of the left ankle. Dr. Brown advised that appellant remained totally disabled from work.

In a letter received on March 17, 2019, appellant requested surgical authorization for release of the lower leg tendon and repair of the ankle ligament.

By decision dated March 18, 2019, OWCP denied authorization for surgical release of the lower leg tendon and repair of the ankle ligament. It accorded the weight of the medical opinion of Dr. Fisher, the referee physician, who opined that appellant required no further definitive treatment except supportive care.[3]

On March 28, 2019 appellant requested reconsideration. In support of his request, he submitted an April 4, 2019 report from Dr. Jeffrey K. Wu, a Board-certified orthopedist, who noted a two-year history of a work-related left ankle/foot injury for which conservative treatment failed. Dr. Wu diagnosed chronic left ankle pain and peroneal tendinitis/tendinopathy after previous sprain and recommended an updated MRI scan. He noted that surgical treatment was an option.

Dr. Brown treated appellant in follow up on April 10, 2019 and diagnosed Achilles tendinitis of the left lower extremity, capsulitis, sprain of the calcaneofibular ligament of the left ankle, and disorder of the ligament. He noted pain and swelling with instability of the left anterior talofibular ligament and calcaneofibular ligament. Dr. Brown recommended Brostrom repair for long-term stability and pain relief.

On April 16, 2019 Dr. Wu treated appellant in follow up for chronic left ankle pain. Findings on examination revealed no demonstrated laxity with stress of the left ankle and tenderness at the tip of the lateral malleolus and inframalleolar portion. Dr. Wu reviewed a left ankle MRI scan performed April 11, 2019, which revealed no evidence of instability or internal derangement, nonspecific edema along the medial ankle, but no significant tear tendinopathy. He diagnosed chronic left ankle pain, previous ankle sprain, and possible underlying peroneal tendinitis. Dr. Wu reviewed the April 10, 2019 report from Dr. Brown who recommended a lateral ligament reconstruction. He noted that appellant had not described symptoms consistent with chronic instability and his examination was not consistent with significant laxity. Dr. Wu opined

[3] *Id.*

that appellant's situation was difficult and a surgery would be considered exploratory with unpredictable results.

On April 17, 2019 the employing establishment offered appellant a full-time, modified-duty assignment, effective April 18, 2019. On April 17, 2019 appellant accepted the position "under protest."

In medical and surgical authorization request dated April 26 and 30, 2019, Dr. Wu again requested authorization to perform release of the lower left leg tendon and repair of the left ankle ligament.

On May 24, 2019 Dr. Wu performed a left peroneus longus tendon repair, left peroneus brevis tenolysis/debridement, and excision of accessory muscle belly. He diagnosed peroneal tendinitis on the left and chronic pain of the left ankle. In a progress note dated May 30, 2019, Dr. Wu noted mild swelling and recommended that appellant remain nonweight bearing.

By decision dated June 20, 2019, OWCP denied modification of the March 18, 2019 decision.

LEGAL PRECEDENT

Section 8103(a) of FECA provides for the furnishing of services, appliances, and supplies prescribed or recommended by a qualified physician which OWCP, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.[4] In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.[5] OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP's authority is that of reasonableness.[6]

While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[7] Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[8] Therefore, in order to prove that the procedure is warranted, appellant must establish that the procedure was for a condition causally

[4] 5 U.S.C. § 8103(a).

[5] *G.M.*, Docket No. 18-1710 (issued June 3, 2019); *Dale E. Jones*, 48 ECAB 648-49 (1997).

[6] *G.M., id.*; *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions, which are contrary to both logic, and probable deductions from established facts).

[7] *G.M., id.*; *Debra S. King*, 44 ECAB 203, 209 (1992).

[8] *Id.; see also Bertha L. Arnold*, 38 ECAB 282 (1986).

related to the employment injury and that the procedure was medically necessary. Both of these criteria must be met in order for OWCP to authorize payment.[9]

ANALYSIS

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

By decision dated March 18, 2019, OWCP denied appellant's authorization for surgical release of the lower leg tendon and repair of the ankle ligament. It accorded the special weight of the medical evidence opinion of Dr. Fisher, the referee physician. By decision dated June 20, 2019, OWCP denied modification of the March 18, 2019 decision.

The Board notes that Dr. Fisher's January 17, 2019 report predates appellant's March 17, 2019 request for authorization for surgery. As no true conflict existed in the medical evidence at the time of the referral to Dr. Fisher on the issue of authorization for surgery, the Board finds that his report may not be accorded the special weight of an IME and should instead be considered for its own intrinsic value.[10] The referral to Dr. Fisher is, therefore, considered to be that of a second opinion evaluation.[11] While, at the time, Dr. Fisher opined that appellant did not require "any further definitive treatment, except supportive care," he has not specifically addressed whether the requested surgical release of the lower leg tendon and repair of the ankle ligament is for treatment of a condition causally related to the employment injury or whether the procedure was medically necessary.

The Board notes that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation. However, OWCP shares responsibility in the development of the evidence to see that justice is done.[12] Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.[13]

Because further clarification is required with regard to Dr. Fisher's opinion, the case must be remanded to OWCP.[14] On remand, OWCP shall request a supplemental report from Dr. Fisher

[9] *See Cathy B. Millin*, 51 ECAB 331, 333 (2000).

[10] *See R.B.*, Docket No. 20-0109 (issued June 25, 2020); *see also F.R.*, Docket No. 17-1711 (issued September 6, 2018).

[11] *See M.G.*, Docket No. 19-1627 (issued April 17, 2020); *S.M.*, Docket No. 19-0397 (issued August 7, 2019) (the Board found that at the time of the referral for an impartial medical examination there was no conflict in medical opinion evidence; therefore, the referral was for a second opinion examination); *see also Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (the Board found that, as there was no conflict in medical opinion evidence, the report of the physician designated as the IME was not afforded the special weight of the evidence, but instead considered for its own intrinsic value as he was a second opinion specialist).

[12] *T.R.*, Docket No. 17-1961 (issued December 20, 2018); *William J. Cantrell*, 34 ECAB 1223 (1983).

[13] *Id.; Richard F. Williams*, 55 ECAB 343, 346 (2004).

[14] *See F.V.*, Docket No. 18-0230 (issued May 8, 2020).

to obtain a rationalized medical opinion as to whether appellant's request for authorization for release of the lower leg tendon and repair of the ankle ligament is medically necessary due to the accepted employment injury. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.[15]

Issued: March 12, 2021
Washington, DC

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

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

[15] Christopher J. Godfrey, Deputy Chief Judge, was no longer a member of the Board effective January 20, 2021.