

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

G.W., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS, VA
CENTRAL CALIFORNIA HEALTH CARE
SYSTEM, Fresno, CA, Employer**

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**Docket No. 20-0507
Issued: March 4, 2021**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 6, 2020 appellant, through counsel, filed a timely appeal from an October 28, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a left foot condition causally related to the accepted October 17, 2018 employment incident.

FACTUAL HISTORY

On January 17, 2019 appellant, then a 55-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she sustained a fracture of her left foot, immobility, pain, and swelling due to factors of her federal employment. She noted that, as she was preparing a patient for transfer to an outpatient facility, a gurney rolled over her foot. Appellant noted that she first became aware of her condition and realized its relation to her federal employment on October 23, 2018. She did not initially stop work.

In an October 23, 2018 report, Jessica Huipio, a physician assistant, noted that appellant was at work trying to move a patient when the rail of the bed hit the top of her foot. Appellant continued working, and after two 12-hour shifts her foot swelled and was painful. She diagnosed left foot pain and calcaneal spur of the left foot. Ms. Huipio completed a work status form, also dated October 23, 2018, advising appellant to return to work on November 3, 2018.

An October 23, 2018 x-ray of appellant's left foot read by Dr. Te-Chung Hsu, a Board-certified diagnostic radiologist, revealed degenerative change and no acute fracture or findings.

In a December 10, 2018 report, Dr. Olubukunola M. Oseni-Olalemi, a podiatrist, noted that appellant denied trauma to the left foot. She indicated that appellant had known medical comorbidities significant for chronic lower back pain, glaucoma, and obesity. Dr. Oseni-Olalemi diagnosed left foot pain.

A January 3, 2019 magnetic resonance imaging (MRI) scan of the left foot without contrast, read by Dr. Mariela Resendes, a Board-certified diagnostic radiologist, revealed an insufficiency fracture of the medial cuneiform and proximal second metatarsal bone and degenerative changes at the second metatarsophalangeal joint.

In a January 8, 2019 report, Dr. Oseni-Olalemi noted that appellant was seen for complaints of left foot pain and that she denied trauma to the painful extremity. She noted that appellant reported a fall at work a few months earlier. Dr. Oseni-Olalemi diagnosed contusion of fifth toe, left foot, subsequent encounter.

A January 8, 2019 work status report from a physician with an illegible signature, indicated that appellant was unable to return to work due to fractures of the left foot. A cam boot was recommended prior to a return to work.

In a development letter dated February 13, 2019, OWCP informed appellant of the deficiencies of her claim and advised her of the type of factual and medical evidence necessary to establish her claim. It provided a questionnaire for her completion regarding the circumstances of the claimed October 23, 2018 employment injury. OWCP requested that appellant submit a narrative medical report from her treating physician which provided a diagnosis and the

physician's rationalized medical explanation as to how the alleged employment incident caused the diagnosed condition. It afforded her 30 days to submit the necessary evidence.

In a letter dated March 12, 2019, appellant indicated that she was resubmitting her medical reports from a physician assistant, with the cosignature of the supervising/attending physician. She explained that the injury occurred as she was assisting with the transfer of a patient and she and the transporters were aligning the gurney next to and parallel to the bed. Appellant noted that when they began to initiate movement of the patient, the gurney moved from its position and the wheel rolled over a portion of the top of her left foot. She explained that when she realized what was happening, her spontaneous reaction was to try to move her foot from the path of the wheel. Appellant noted that at that point, she jerked her foot to move it and the top of her foot hit the rail to which the wheel was attached. She explained that since the incident, she experienced consistent swelling and pain to the left foot. Appellant noted that transferring patients and moving them from a bed to a gurney was part of her job.

OWCP received a copy of the October 23, 2018 report from Ms. Huipio, which was cosigned on February 28, 2019 by Dr. Robin R. Linscheid Janzen, a family medicine specialist. Dr. Linscheid Janzen indicated that appellant was at work moving a patient when the rail of the bed fell and hit the top of her left foot. She diagnosed left foot pain and a calcaneal spur.

A witness statement dated March 10, 2019, from W.S., a coworker, indicated that he saw that appellant had injured her left foot and was limping when making the transfer of a patient. He also noted that he made this statement to J.S., the assistant unit manager. The date of the incident was not provided.

A witness statement dated March 11, 2019, from M.B., a coworker, advised that he could verify and attest that he observed that appellant injured her left foot and was in pain and limping, following transfer of a patient. The date of the incident was not provided.

In a report dated March 14, 2019, Dr. Daniel B. Brubaker, an osteopath Board-certified in anatomic and clinical pathology, noted that appellant was seen for complaints of pain in her left foot due to a work injury. He explained that appellant was performing her usual and customary duties assisting a patient from a bed to a gurney, when the gurney shifted, the wheel rolled on top of her left foot, she jerked her foot to remove it, and the top of her foot hit a rail to which the wheel was attached, causing more pain and injury to the foot. Dr. Brubaker noted that appellant related that her foot had been swollen and painful since the date of injury, which he listed as October 17, 2018. He indicated that appellant denied any prior work injury, motor vehicle accident, or sports injury. Dr. Brubaker noted appellant's history, provided examination finding, and discussed the diagnostic testing, x-rays, and MRI scan of the left foot. He diagnosed work injury, left foot pain, and a calcaneal spur of left foot, and referred appellant to an orthopedic surgeon who specialized in podiatry.

By decision dated April 24, 2019, OWCP denied appellant's claim. It found that the medical evidence of record was insufficient to establish causal relationship between appellant's medical condition and the accepted employment incident.

On May 8, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held before an OWCP hearing representative on August 12, 2019. During the hearing, appellant clarified that her claim was for a traumatic injury, not an occupational disease. She also explained that the work incident occurred on October 17, 2018, but she was not able to see a physician for initial treatment until October 23, 2018. The hearing representative advised appellant of the type of medical evidence necessary to establish her traumatic injury claim and held the case record open for 30 days for the submission of additional evidence.

OWCP received April 3, 2019 progress notes from Dr. Francis E. Glaser, a Board-certified orthopedic surgeon, who noted that appellant was seen for complaints of left dorsal mid foot pain and swelling that began acutely in October 2018, when she was at work and a gurney rolled over her left foot. Dr. Glaser indicated that the history of injury and diagnostic reports demonstrated soft tissue swelling, but no fractures and that a follow-up MRI scan revealed a nondisplaced fracture. He diagnosed "left mid foot pain, etiology undefined," he further explained that since there was no evidence on x-ray of a resolving or unresolved fracture, he opined that "[t]his may in fact represent a bone contusion or even arthritis."

In April 12, 2019 progress notes, Dr. Glaser advised that appellant presented with pain on the left side and was symptomatically unchanged. He noted that appellant complained of left mid-foot pain related to an injury at work when, "A [wheel] rolled over her left foot." Dr. Glaser assessed a closed nondisplaced fracture of second metatarsal bone of the left foot with routine healing, subsequent encounter, and indicated that appellant had a left second metatarsal base and medial cuneiform fractures healing.

In his August 8, 2019 addendum to first report of injury, Dr. Brubaker noted that he was provided additional information after he was informed that his initial report was not sufficient to establish causal relationship. He noted, "Frankly, I think it is pretty clear, but I will lay out my medical reasoning." Dr. Brubaker explained that on October 17, 2018, appellant along with two colleagues was transferring a patient from a bed to a gurney when the gurney rolled over her left foot causing pain and swelling. He noted that the average weight of a gurney was 100 pounds. Dr. Brubaker noted that appellant's first medical appointment was on October 23, 2018, during which she had related a history that the rail of a bed hit the top of her foot and she kept working for two days following which the foot swelled. He also noted that while she had denied any trauma to her foot when she was seen on December 10, 2018 by a foot specialist, he opined that injured workers could easily be pressured to go outside the work comp system. Dr. Brubaker explained that he had reviewed the medical reports of record and the description of the incident and opined that "it was very probable and likely that [appellant] indeed injured her foot by a gurney rolling over it. The natural inclination to abruptly pull the foot out from under such weight could cause additional pain as well." He concluded that a foot injury can cause enormous pain, depending on the severity of the damage. Excessive walking or other activities which required standing or moving could exacerbate the injured foot, and certain medical conditions such as diabetes or arthritis could compound the pain in an injured foot by decreasing blood circulation and healing time.

By decision dated October 28, 2019, OWCP's hearing representative affirmed the April 24, 2019 decision.

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,³ 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.⁴ 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.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁶ First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time and place, and in the manner alleged.⁷ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve.⁹ The opinion of the physician must be based on a complete factual and medical background, 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 incident identified by the claimant.¹⁰

³ See *D.P.*, Docket No. 19-1596 (April 23, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *C.K.*, Docket No. 19-1549 (issued June 30, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *T.M.*, Docket No. 20-0767 (issued January 13, 2021); *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).

⁶ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁷ *C.D.*, Docket No. 20-0762 (issued January 13, 2021); *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *C.D.*, *id.*; *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left foot condition causally related to the accepted October 17, 2018 employment incident.

OWCP initially received an October 23, 2018 report from Ms. Huipio, a physician assistant, which was subsequently countersigned by Dr. Linscheid Janzen.¹¹ This report related a history that one week prior appellant was moving a patient and the rail of the bed hit the top of her foot, appellant continued working and after two days her foot developed swelling and pain. The Board notes that this differs from the accepted employment incident of appellant's left foot being run over by a gurney. An inconsistent history of injury limits the probative value of a medical opinion.¹² Regarding the diagnosis of calcaneal spur, the report did not offer any explanation as to how appellant could have developed a bone spur due to a gurney rolling over her foot, the accepted incident in this claim. 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 regarding the issue of causal relationship.¹³

In a December 10, 2018 report, Dr. Oseni-Olalemi noted that appellant had denied any trauma to her left foot and he related appellant's complaints of left foot pain. He provided a January 8, 2019 report in which he diagnosed contusion of fifth toe, left foot; however, he again related that appellant had denied any trauma to the left foot. As Dr. Oseni-Olalemi did not provide an opinion that appellant's diagnosed condition was causally related to the accepted employment incident, these reports are of no probative value on the issue of causal relationship and are insufficient to establish appellant's claim.¹⁴

In a report dated March 14, 2019, Dr. Brubaker diagnosed left foot pain and a calcaneal spur of the left foot. In his August 8, 2019 addendum, Dr. Brubaker opined that "it was very probable and likely that she indeed injured her foot by a gurney rolling over it. The natural inclination to abruptly pull the foot out from under such weight could cause additional pain as well." The Board has held that medical opinions that are speculative or equivocal are of diminished probative value.¹⁵ Consequently, Dr. Brubaker's opinion is insufficient to meet appellant's burden of proof to establish her claim.

OWCP received April 3, 2019 progress notes from Dr. Glaser noted that appellant's left foot had been run over by a gurney in October 2013. Dr. Glaser reviewed appellant's x-ray and

¹¹ A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

¹² *R.H.*, Docket No. 18-0021 (issued March 22, 2018); *see S.L.*, Docket No. 16-0222 (issued August 11, 2016).

¹³ *B.W.*, Docket No. 20-1032 (issued November 17, 2020); *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *L.B.*, Docket No. 19-1907 (issued August 14, 2020).

¹⁵ *D.S.*, Docket No. 20-0384 (issued October 8, 2020); *H.A.*, Docket No. 18-1455 (issued August 23, 2019).

MRI scan of the left foot and noted that the x-ray did not show evidence of a resolving or resolved fracture. He then diagnosed “left mid foot pain, etiology undefined” and opined “[t]his may in fact represent a bone contusion or even arthritis.” In April 12, 2019 progress notes, Dr. Glaser noted that “A [wheel] rolled over [appellant’s] left foot” and he diagnosed a closed nondisplaced fracture of second metatarsal bone of the left foot with routine healing, subsequent encounter, and left second metatarsal base and medial cuneiform fractures healing. While Dr. Glaser noted appellant’s history regarding the employment incident, he did not offer an opinion regarding causal relationship. The Board has held that 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.¹⁶ Thus, this report is also insufficient to establish the claim.

OWCP also received an October 23, 2018 x-ray and a January 3, 2019 MRI scan of the left foot. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship, as they do not provide an opinion as to whether the employment incident caused any of the diagnosed conditions.¹⁷ This evidence is therefore insufficient to establish appellant’s claim.

Appellant also submitted a January 28, 2019 work status report with an illegible signature. The Board has held that reports that are unsigned or bear an illegible signature cannot be considered probative medical evidence as the author cannot be identified as a physician.¹⁸ Therefore, this report has no probative value and is insufficient to establish the claim.

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant’s diagnosed conditions and the accepted October 17, 2018 employment incident, 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left foot condition causally related to the accepted October 17, 2018 employment incident.

¹⁶ *B.W.*, Docket No. 20-1032 (issued November 17, 2020); *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁷ *See C.B.*, Docket No. 20-0464 (issued July 21, 2020).

¹⁸ *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the October 28, 2019 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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