

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

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**L.R., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
McLean, VA, Employer**

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**Docket No. 20-0393  
Issued: May 17, 2021**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On December 10, 2019 appellant, through counsel, filed a timely appeal from a November 8, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> OWCP continued to receive evidence following its November 8, 2019 decision. 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.*

## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional condition of Achilles tendinitis causally related to her accepted October 7, 2015 employment injury; (2) whether OWCP has met its burden of proof to terminate appellant's entitlement to wage-loss compensation and medical benefits, effective June 13, 2019, as she no longer had residuals or disability causally related to her accepted employment injury; and (3) whether appellant has met her burden of proof to establish continuing employment-related disability or residuals, on or after June 13, 2019, due to the accepted employment injury.

## **FACTUAL HISTORY**

On October 8, 2015 appellant, then a 41-year-old assistant city carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 7, 2015 she sustained injuries to her left ankle when she stepped in a hole while delivering mail in the performance of duty. She stopped work on the date of injury. OWCP accepted the claim for left ankle sprain. It paid appellant intermittent wage-loss compensation from February 9 to April 1, 2016.

An October 8, 2015 x-ray of appellant's left ankle revealed a tiny, well-corticated fragment in the anterior ankle on the lateral view, which might represent sequela of old trauma and no other fractures.

A January 26, 2016 magnetic resonance imaging (MRI) scan of appellant's left ankle read by Dr. Paul Cooper, a Board-certified orthopedic surgeon, demonstrated peroneal tendinopathy, injury to the anterior and inferior tibiotalar ligament and possibly anterior talar fibular and calcaneofibular ligament, posterior tibial tendinopathy, and Achilles tendinopathy. Dr. Cooper noted that there had been prior injury to the anterior inferior tibiofibular ligament and also to the anterior talofibular and calcaneofibular ligaments.

Appellant received a schedule award for two percent permanent impairment of the left lower extremity for the period from October 28 to December 7, 2018. This schedule award was based upon an October 28, 2018 report from Dr. Robert Macht, a general surgeon, who provided a permanent impairment rating for appellant's left ankle sprain, based upon her ligament injury. Dr. Macht also noted that her January 2016 MRI scan showed tendinopathy of the peroneal tendon, posterior tibialis tendon, and Achilles tendon, and injury to the anterior, inferior, tibiofibular ligament, anterior talofibular ligament, and calcaneofibular ligaments.

On October 30, 2018 OWCP prepared a statement of accepted facts (SOAF) which noted appellant's history of injury on October 7, 2015 and that her claim was accepted for left ankle sprain. It also related that she had undergone conservative medical treatment and that she had been released to limited-duty work on March 9, 2016.

On October 30, 2018 OWCP referred appellant and the SOAF to Dr. D. Burke Haskins, a Board-certified orthopedic surgeon, for a second opinion examination to determine the nature and status of her work-related injuries. Dr. Haskins was asked to provide diagnoses for appellant's conditions, explain the causes of her subjective and objective findings, and provide an opinion as to whether her diagnoses were causally related to the accepted employment injury.

In a November 13, 2018 report, Dr. Haskins noted that he reviewed appellant's history of injury, medical treatment, and the SOAF. He indicated that her October 8, 2015 x-rays of the left ankle revealed no definite acute abnormality, however, her January 26, 2016 left ankle MRI scan did demonstrate peroneal tendinopathy and injury to the anterior and inferior tibiotalar ligament and possibly the anterior talar fibular and calcaneofibular ligament. Dr. Haskins provided examination findings for the lower extremity of no atrophy; no ankle swelling; full range of motion (ROM); some tenderness of the ankle, Achilles tendon, and other regions; intact sensation; no obvious joint effusion; and intact peroneals. He noted that when asked to stand, appellant was able to stand on her heels, but was unable to stand on her left toes. In response to OWCP's inquiries, Dr. Haskins diagnosed left ankle sprain and found that appellant had reached maximum medical improvement (MMI). He noted appellant's subjective complaint of pain following an ankle sprain. Dr. Haskins opined that appellant could return to all normal activity and work and also noted that she had no preexisting conditions.

In a February 26, 2019 report, Dr. Cooper diagnosed Achilles tendon pain.

By notice dated March 21, 2019, OWCP advised appellant that it proposed to terminate her entitlement to wage-loss compensation and medical benefits based on Dr. Haskins' opinion that the accepted conditions had ceased without residuals. It afforded her 30 days to submit additional evidence.

A March 20, 2019 MRI scan interpreted by Dr. Cali Lubrant, a radiologist, noted findings of new edema within the flexor hallucis longus muscular belly and distal soleus muscle, as well as minimally increased signal within the superomedial portion of the spring ligament. Dr. Lubrant also noted that the findings were otherwise similar to the January 26, 2016 MRI scan.

Dr. Cooper reported on March 29, 2019, that he reviewed appellant's March 11, 2019 bone scan and March 20, 2019 MRI scan. He noted that her ankle was structurally stable and there was no evidence of reflex sympathetic dystrophy. Dr. Cooper also noted that appellant's symptoms were not in proportion to her bone scan and MRI scan findings, and due to the hypersensitivity and burning nature of her pain, she had been referred for further evaluation.

A May 15, 2019 electromyography (EMG) scan of appellant's left lower extremity was read by Dr. Kevin F. Fitzpatrick, a Board-certified physiatrist, as within normal limits and with no abnormalities.

On June 3, 2019 OWCP received a September 19, 2017 x-ray report from Dr. Michael Nellamattathil, a radiologist, which revealed mild degenerative changes of the talonavicular joint and no acute radiographic abnormalities.

By decision dated June 13, 2019, OWCP finalized the termination of appellant's entitlement to future wage-loss compensation and medical benefits, effective June 13, 2019, finding that Dr. Haskins' report was entitled to the weight of the medical evidence.

On June 18, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 2, 2019. Appellant testified that she continued to experience pain, throbbing, aching, and tenderness of the ankle. She denied prior problems with her ankle and subsequent injuries. Appellant noted that she had stopped work on February 2, 2019. Counsel argued that the evidence supported continued symptoms of the work injury and that the second opinion physician found that appellant had global

tenderness, including the Achilles tendon, posterior tibial region, anterior medial malleolar, anterior medial joint line, anterior joint line, lateral malleolar, and perineal region. He argued that the termination of benefits was premature and the case should be expanded to include Achilles tendinitis.

In a November 30, 2018 report, Dr. Cooper indicated that radiographs obtained on that date were unremarkable. He diagnosed tendinopathy and left ankle pain.

In a July 12, 2019 report, Dr. Cooper noted that there was no evidence of a new fracture or dislocation and that appellant's symptoms were primarily neurogenic in etiology. He diagnosed left foot pain and found that she was stable from an orthopedic perspective and no further treatment was needed. Dr. Cooper referred appellant to a pain management specialist for evaluation.

In an October 17, 2019 report, Dr. David King, a Board-certified internist, noted appellant's history of injury. He explained that appellant was seen for possible nerve compression or nerve entrapment in the ankle area and diagnosed complex regional pain syndrome involving the ankle. Dr. King noted that appellant failed oral medication and pain management. He opined, "[i]t is clear upon reviewing all the documentation in her evaluations from the different specialists that she is unable to continue to perform the work as a letter carrier due to this particular long-standing abnormality. Due to the nature of it being mostly nerve damage or compression or entrapment all yet to be fully determined this condition has been refractory to most treatments at this time clinically she is not able to perform the task as a mail carrier."

By decision dated November 8, 2019, OWCP's hearing representative affirmed the June 13, 2019 decision, finding that Dr. Haskins' report was entitled to the weight of the medical evidence.

### **LEGAL PRECEDENT -- ISSUE 1**

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.<sup>4</sup> To establish causal relationship between a condition and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>5</sup> The opinion of the physician 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.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

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

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<sup>4</sup> See *C.C.*, Docket No. 19-1948 (issued January 8, 2021); *D.F.*, Docket No. 19-1257 (issued July 12, 2020).

<sup>5</sup> *Id.*

<sup>6</sup> See *M.M.*, Docket No. 19-0061 (issued November 21, 2019); *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

OWCP referred appellant to Dr. Haskins for a second opinion examination to determine the nature and status of her work-related injuries and asked him to provide diagnoses for appellant's conditions, explain the causes of appellant's subjective and objective findings, and provide an opinion as to whether appellant's diagnoses were causally related to the accepted employment injury. He indicated that October 8, 2015 x-rays of appellant's left ankle revealed no definite acute abnormality and his examination findings did not find residuals of the accepted left ankle sprain. Dr. Haskins diagnosed a left ankle sprain, resolved, and found that appellant was at MMI. However, he also noted that the January 26, 2016 MRI scan demonstrated peroneal tendinopathy, injury to the anterior and inferior tibiotalar ligament, and possibly anterior talar fibular and calcaneofibular ligament, posterior tibial tendinopathy, and Achilles tendinopathy. Dr. Haskins offered no opinion as to the cause of these MRI scan findings in relation to the accepted work injury. The Board finds Dr. Haskins noted appellant's January 26, 2016 MRI scan findings, but did not provide complete responses to OWCP's questions regarding appellant's diagnosed conditions and their causal relationship to the accepted employment injury. As Dr. Haskins failed to provide an opinion as to whether appellant's claim should be expanded to include additional conditions based on the MRI scan, his opinion is of diminished probative value.<sup>7</sup> His report is insufficient to resolve whether appellant's claim should be expanded to include Achilles tendinitis, or any other left foot condition.

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence.<sup>8</sup> Once OWCP undertook development of the evidence by referring appellant to a second opinion physician, it had the duty to secure an appropriate report addressing the relevant issues.<sup>9</sup> The case will be remanded to OWCP for further development of the medical evidence. On remand OWCP shall prepare an updated SOAF and should obtain a supplemental opinion from Dr. Haskins. If Dr. Haskins is unavailable or unwilling to provide a supplemental opinion, OWCP shall refer appellant, to another second opinion physician in the appropriate field of medicine for a rationalized opinion. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **LEGAL PRECEDENT -- ISSUE 2**

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.<sup>10</sup> After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to

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<sup>7</sup> See *C.C.*, *supra* note 4; *D.F.*, *supra* note 4.

<sup>8</sup> See *D.M.*, Docket No. 19-1181 (issued December 2, 2019).

<sup>9</sup> *S.S.*, Docket No. 18-0397 (issued January 15, 2019); *Richard F. Williams*, 55 ECAB 343 (2004).

<sup>10</sup> *J.T.*, Docket No. 20-0482 (issued November 3, 2020); see *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Paul L. Stewart*, 54 ECAB 824 (2003).

the employment.<sup>11</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>12</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>13</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 13, 2019.

OWCP has undertaken development of the medical record by referring appellant to a second opinion physician to determine whether the acceptance of appellant's claim should be expanded and whether she had residuals or disability related to her accepted October 7, 2015 employment injury. As OWCP has not resolved the issue of whether acceptance of appellant's claim should be expanded and therefore whether her residuals and/or disability due to all of her accepted conditions had ceased, the Board finds that it has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.<sup>15</sup>

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<sup>11</sup> See *J.T., id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>12</sup> *K.W.*, Docket No. 19-1224 (issued November 15, 2019); see *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>13</sup> *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>14</sup> *A.T., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

<sup>15</sup> *C.S.*, Docket No. 20-0621 (issued December 22, 2020).

**CONCLUSION**

The Board finds that this case is not in posture for decision on the issue of claim expansion. The Board further finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.<sup>16</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** November 8, 2019 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 17, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>16</sup> In light of the Board's disposition of the first two issues, Issue 3 is rendered moot.