

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

M.G., Appellant	)	
	)	
and	)	Docket No. 21-0879
	)	Issued: November 19, 2021
U.S. POSTAL SERVICE, LOMA CARRIER	)	
ANNEX, Long Beach, CA, Employer	)	
	)	

*Appearances:*  
Kelley Craig, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 21, 2021 appellant, through counsel, filed a timely appeal from a December 1, 2020 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 over the merits of this case.

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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.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

## FACTUAL HISTORY

On June 14, 2018 appellant, then a 54-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a right foot injury at work due to walking on driveways, asphalt surfaces, uneven paving, and stairs. She asserted that she first became aware of her claimed injury and its relation to her federal employment on April 14, 2018. Appellant stopped work on April 21, 2018. In a June 7, 2018 statement, she alleged that her prolonged walking duties had caused the arch on her right foot to swell.

Appellant submitted an April 22, 2018 report of Dr. Mariela I. Garcia, a Board-certified family medicine specialist, who diagnosed right plantar fasciitis and indicated that she was placing appellant off work from April 22 through 25, 2018. Dr. Garcia further advised that appellant could return to full-capacity work on April 26, 2018. In an April 25, 2018 report, Dr. Susanne T. Lam, a Board-certified family medicine specialist, diagnosed left ankle joint pain and noted that she was placing appellant off work from April 26 through May 2, 2018.

In a May 3, 2018 report, Dr. Michael F. Low, a podiatrist, advised that he was placing appellant off work from May 3 through 13, 2018 and on modified activity at work and home from May 14 through June 10, 2018. He found that appellant could return to full-capacity work on June 11, 2018.<sup>3</sup> On May 15, 2018 Dr. Anjum Sameena, a Board-certified family medicine specialist, noted that she was placing appellant off work for May 15, 2018 and that she could return to full-capacity work on May 16, 2018. In a May 31, 2018 report, Dr. Stephen H. Phan, a Board-certified emergency medicine specialist, advised that he was placing appellant off work from May 31 through June 2, 2018.

In a June 22, 2018 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her as to the type of additional factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In response, appellant submitted a July 18, 2018 narrative report from Dr. Theodore J. Sung, a Board-certified occupational disease specialist, who discussed diagnostic testing of the right foot/ankle, reported physical examination findings, and diagnosed mass of the right foot joint.<sup>4</sup> In a July 18, 2018 attending physician's report (Form CA-20), Dr. Sung listed the date of injury as April 22, 2018. However, on an attached sheet, he noted that appellant reported her date of injury date was "more accurately reflected" as April 14, 2018 when she twisted her right ankle

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<sup>3</sup> OWCP also received May 29 and June 5, 2018 reports in which Dr. Low placed appellant off work for the periods May 14 through 31, and June 5 through July 15, 2018, respectively.

<sup>4</sup> Dr. Sung's report includes the findings of a June 26, 2018 evaluation by Dr. Angela K. Heinen, an osteopath Board-certified in orthopedic surgery, at which time she diagnosed a right posterior tibialis tendinitis tear.

at work on that date and had experienced pain since then. Dr. Sung diagnosed mass of right foot joint and indicated that appellant had been capable of resuming her regular work on July 17, 2018.

By decision dated August 7, 2018, OWCP accepted that appellant's job required extensive walking, as alleged. However, it denied her claim, finding that she had not submitted sufficient medical evidence to establish a medical condition causally related to the accepted employment factors. OWCP noted that appellant had not established "an injury and/or medical condition causally related to the accepted work event(s)."

On August 6, 2019 appellant, through counsel, requested reconsideration of the August 7, 2018 decision. OWCP received July 31 and August 21, 2019 reports from Dr. Ryan Culver, a podiatrist, who noted that appellant complained of right foot pain due to walking on uneven pavement, stairs, and surfaces covered with ice/snow. Upon physical examination, appellant exhibited 4/5 inversion strength in the right foot/ankle. In a July 31, 2019 progress report, Dr. Culver diagnosed posterior tibial tendinitis of the right leg and pain in the right ankle and foot joints, and indicated that appellant could return to modified-duty work on that date. In an August 21, 2019 progress report, he provided the additional diagnosis of plantar fascial fibromatosis and advised that appellant could return to modified-duty work on that date.

By decision dated October 30, 2019, OWCP denied modification of the August 7, 2018 decision.

On October 20, 2020 appellant, through counsel, requested reconsideration of the October 30, 2019 decision.

OWCP received a February 3, 2020 report from Dr. Hamid Rahman, a Board-certified orthopedic surgeon, who indicated that appellant reported her job duties for 15 years included a considerable amount of repetitive walking, standing, and lifting. Appellant further reported that she injured her right leg, joints, and ankle over time while performing these duties and that on April 14, 2018 she fell and twisted her right ankle while she was walking on uneven ground during her mail delivery route. Dr. Rahman advised that appellant underwent right ankle surgery on August 31, 2018 and noted that she currently complained of intermittent right ankle pain, which she rated at 5 through 7 out of a scale of 10. Upon physical examination, appellant exhibited antalgic gait, gross deformity of the right foot/ankle, and tenderness to palpation and swelling over the surgical scar and medial aspect of the right ankle. Dr. Rahman diagnosed history of plantar fibromatosis, right foot sprain/strain, right ankle sprain/strain, surgical release/excision of the plantar fibromatosis, and residual pain of the right ankle/foot. He noted, in the discussion section of the report, "This patient was employed with the [employing establishment] sustained an industrial injury on [April 14, 2018] to the right ankle. The injury occurred when she tripped on uneven ground in a parking lot, outside of the post office in Long Beach."

In an addendum report dated May 28, 2020, Dr. Rahman advised that he wished to further explain how appellant's work injuries occurred and caused her to suffer from posterior tibial tendinitis, plantar fascial fibromatosis, right foot sprain/strain, and right ankle sprain/strain. He indicated that the posterior tibial tendon is located in the back of the leg and passes underneath the inside of the medial malleolar, which is inserted over the medial aspect of the navicular bone, which is posted to the arches of the foot and helps with locomotion. Tibial inflammation or

tendinitis is caused by inflammation along with the partial-to-complete tear resulting in the infirmity process, and that the condition results in ongoing pain, swelling, and difficulty with walking and weight bearing, which results in awkward, unsteady gait, antalgic gait, and weakness in motion of the foot. Dr. Rahman indicated that the posterior tibial tendinitis can slowly result in chronicity of the complaints and trauma can cause symptoms to flare up. He opined that it was within a reasonable degree of medical certainty that appellant developed posterior tibial tendinitis caused by the work-related injury on April 14, 2018, which was due to her work-related activities as a city carrier. Dr. Rahman further indicated that appellant's job required her to walk, stand, and move continuously for at least eight hours per day. He noted, "[t]his is exactly the kind of overuse and repeated trauma to the tendon[,] which makes the posterior tibial tendon to become inflamed."

Dr. Rahman opined that appellant's April 14, 2018 fall was more likely to have happened due to her unsteady gait from the posterior tibial tendinitis and noted that appellant's symptoms were at the medial aspect of the foot, the point where the tendon passes before it is attached to the tuberosity of the navicular bone. He advised that, when the foot arch collapses, the heel bone shifts to a new position outward and puts pressure on the outward ankle bones/leg joint such that the antalgic gait creates further deterioration of the symptoms. Dr. Rahman indicated that a foot sprain often happens when the foot lands awkwardly and the person rolls or turns the ankle. Walking on an uneven surface plays a larger role in these types of injuries, and these conditions are associated with pain, tenderness, bruising, swelling, and inability to put body weight on the extremity. Dr. Rahman indicated that, when appellant fell and twisted her ankle while walking on uneven surfaces and performing her duties on April 14, 2018, she experienced precisely the type of injury that leads to a foot/ankle sprain. He opined that there was nothing in appellant's history to explain the type of her right foot/ankle injury other than the performance of her work-related activities and the further aggravation of the condition from the injury on April 14, 2018. Dr. Rahman noted, "[i]t is my medical opinion that, based on the objective findings and the reason of medical certainty, it remains my medical opinion that the continued performance of her job duties as a mail handler for the [employing establishment] over time caused her right leg posterior tibial tendinitis as well as the plantar fascial fibromatosis."

By decision dated December 1, 2020, OWCP denied modification of the October 30, 2019 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> 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 filed with the applicable time limitation, that an injury was sustained while in the performance of duty, as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the

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<sup>5</sup> *Supra* note 2.

employment injury.<sup>6</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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>8</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>9</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>10</sup> 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 specific employment factor(s).<sup>11</sup>

### ANALYSIS

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

Appellant submitted a February 3, 2020 report from Dr. Rahman, who indicated that appellant reported her job duties for 15 years included a considerable amount of repetitive walking, standing, and lifting. Dr. Rahman diagnosed history of plantar fibromatosis, right foot sprain/strain, right ankle sprain/strain, surgical release/excision of the plantar fibromatosis, and residual pain of the right ankle/foot.

Appellant also submitted an addendum report dated May 28, 2020 in which Dr. Rahman discussed the physiological nature of the posterior tibial tendon and noted that inflammation or tendinitis is caused by inflammation along with the partial to complete tear resulting in the infirmity process, and that the condition results in ongoing pain, swelling, and difficulty with walking and weight bearing, which results in awkward, unsteady gait, antalgic gait, and weakness

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<sup>6</sup> *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>7</sup> *E.S.*, *id.*; *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *W.M.*, Docket No. 14-1853 (issued May 13, 2020); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>10</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>11</sup> *Id.*; *Victor J. Woodhams*, *supra* note 8.

in motion of the foot. Dr. Rahman opined that it was within a reasonable degree of medical certainty that appellant developed posterior tibial tendinitis caused by the work-related injury on April 14, 2018, which was due to her work-related activities as a city carrier. He further indicated that appellant's job required her to walk, stand, and move continuously for at least eight hours per day and noted, "[t]his is exactly the kind of overuse and repeated trauma to the tendon[,] which makes the posterior tibial tendon to become inflamed." Dr. Rahman found that there was nothing in appellant's history to explain the type of her right foot/ankle injury other than the performance of her work-related activities. He noted, "[i]t is my medical opinion that based on the objective findings and the reason of medical certainty it remains my medical opinion that the continued performance of her job duties as a mail handler for the [employing establishment] over time caused her right leg posterior tibial tendinitis as well as the plantar fascial fibromatosis."

The Board notes that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.<sup>12</sup> The Board finds that, while Dr. Rahman's reports are insufficient to meet appellant's burden of proof, they raise an uncontroverted inference of causal relation between her claimed right foot/ankle conditions and the accepted factors of her federal employment. He provided a comprehensive understanding of the medical record and case history, and a pathophysiological explanation as to how the mechanism of the accepted employment factors were sufficient to cause the diagnosed conditions. Dr. Rahman's opinion is not contradicted by any substantial medical or factor evidence of record. Therefore, further development of appellant's claim is required.<sup>13</sup>

On remand OWCP shall refer appellant, along with the case record, and a statement of accepted facts to a specialist in the appropriate field of medicine for a second opinion examination and an evaluation regarding whether she sustained a right foot/ankle condition causally related to the accepted factors of her employment. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why the opinion differs from that of Dr. Rahman. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's claim.

### CONCLUSION

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

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<sup>12</sup> See *B.B.*, Docket No. 18-1321 (issued April 5, 2019).

<sup>13</sup> See *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 1, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: November 19, 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