



## ISSUE

The issue is whether appellant has met her burden of proof to establish a right foot condition causally related to the accepted October 19, 2018 employment incident.

## FACTUAL HISTORY

On November 2, 2018 appellant, then 49-year-old a medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that on October 19, 2018 a large wooden panel from under the sink fell off and hit her right shin, slid down her right leg, and landed on top of her right foot. She stated that she had several moderate to severe contusions from the top of her right shin down her right leg. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. Appellant did not stop work.

In support of her claim, appellant submitted a January 4, 2019 report by Dr. Tara Sakevich, a podiatrist. Dr. Sakevich noted appellant's history of injury that on October 19, 2018 the bottom of a sink slid down her leg and landed on the instep of her right foot and caused her pain, burning, and tingling. Appellant stated that continued weight bearing and activity increased her symptoms. Dr. Sakevich noted that an x-ray of appellant's foot showed no recent fracture or dislocation, and a magnetic resonance imaging (MRI) scan on November 16, 2018 showed a right foot type II accessory navicular which demonstrated mild edema and a subtle nondisplaced fracture, mild osteoarthritis of the MTP joint with mild hallux valgus, and atrophy of the abductor digiti minimi muscle. She assessed appellant's condition as crush neuropraxia of common peroneal and fibromyalgia.

On January 4, 2019 Dr. Michael Czurylo, a podiatrist, opined that appellant could return to work full time with limitations, and could likely return to work without limitations on February 4, 2019.

OWCP received a progress note dated January 24, 2019 from Dr. Lawrence Marczak, a podiatrist. Dr. Marczak noted Dr. Sakevich's previous diagnoses and indicated that appellant's electromyogram showed no abnormalities.

OWCP received a report dated March 11, 2019 from Dr. Huan J. Chang, a rheumatology specialist. Dr. Chang stated that appellant recently suffered an injury which required her to wear a hard boot which has aggravated her fibromyalgia. He opined that it was very possible that appellant's foot injury and the hard boot exacerbated her fibromyalgia.

Appellant also submitted an undated report, received on March 26, 2019, from Dr. Czurylo in which he stated that appellant's injury on October 19, 2018 exacerbated her fibromyalgia condition.

In a development letter dated January 22, 2020, OWCP advised appellant that her claim had been reopened and additional factual and medical evidence was necessary to establish her claim. Specifically, it indicated that appellant did not establish that she actually experienced the incident or employment factor alleged to have caused injury and a physician's opinion as to how

her injury resulted in the condition diagnosed had not been provided. OWCP also attached a questionnaire for her completion. It afforded appellant 30 days to submit the necessary evidence.

In a separate development letter of even date, OWCP requested additional medical evidence from Dr. Chang establishing appellant's pre-injury baseline of her fibromyalgia condition. It requested that he provide an explanation of the physiological process as to how the date of injury events worsened the preexisting fibromyalgia and a detailed medical report explaining whether this was temporary or permanent aggravation of her preexisting conditions.

By decision dated February 24, 2020, OWCP accepted that the October 19, 2018 incident occurred as alleged, but denied appellant's claim finding that causal relationship had not been established.

In a letter dated March 3, 2020, appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on June 10, 2020.

OWCP thereafter received a series of progress notes from the employing establishment medical clinic. In a report dated October 19, 2018, Dr. Scott Sorensen, a Board-certified diagnostic radiology specialist, related that x-ray of appellant's foot revealed no evidence of an acute fracture or dislocation. He noted that appellant's previous conditions of mild hallux valgus deformity, or bunion, and mild degenerative changes remained unchanged. In addition, Dr. Sorensen noted that the appellant had a type II accessory navicular bone, or extra bone. He diagnosed appellant with a minor abnormality.

In a report dated November 16, 2018, Dr. Antonella Lostumbo, a radiology specialist, indicated that an MRI scan of appellant's right foot revealed mild edema and a subtle nondisplaced fracture. She stated that the appellant had a mild first metatarsophalangeal joint space narrowing with a mild hallux valgus deformity and periarticular spurring as noted on prior radiographs. Dr. Lostumbo also diagnosed her with mild flexion deformities of the lesser toes and a small cyst.

In a report dated June 6, 2019, Dr. Yousef M. Yasin, a Board-certified diagnostic radiology specialist, noted that x-ray of appellant foot found no acute fracture or malalignment. He found a mild valgus deformity with a first MPT joint angle of 17 degrees. Dr. Yasin diagnosed the appellant with an abnormality.

In a report dated August 7, 2019, Dr. Lostumbo, found the appellant had a small amount of posterior tibiotalar and talocalcaneal fluid as well as retrocalcaneal fluid. She also noted there was a mild subcutaneous edema about the ankle. Dr. Lostumbo related the appellant had a mild edema in the flexor hallucis longus and peroneal brevis muscles and a mild Achilles paratenonitis, and she listed appellant's diagnosis as a minor abnormality.

OWCP also received an additional series of progress notes. In a note dated November 5, 2018, Dr. Megan Rae Leahy, a podiatrist, related that appellant had throbbing pain that had been worsened since her injury. She noted that appellant was previously diagnosed with fibromyalgia. Dr. Leahy diagnosed her with a crush injury or bone bruising and found no fractures or dislocations. She ordered an MRI scan to further evaluate soft tissue/bone injury. Dr. Leahy also ordered a CAM boot and instructed appellant to wear it at all times.

In a note dated November 26, 2018, Dr. Michael Oster, a podiatrist, related that appellant had noticed a knot with some swelling and bruising of her right foot. Appellant stated that her previous treatment had helped temporarily but continued weight bearing and activity made her pain worse. Dr. Oster noted that there was no fracture or dislocation; however, the MRI scan found soft tissue injury and a bone edema. He ordered compression stockings and a CAM boot.

In a note dated December 20, 2018, Dr. Kristopher M. Lopez, a Board-certified podiatric surgery specialist, related that appellant was in immediate pain. He noted appellant had no fractures or dislocations. Dr. Lopez ordered compression stockings, and provided an injection for pain relief, and a soft cast for her right leg.

In a note dated January 14, 2019, Dr. Chang related that appellant was seen for a fibromyalgia follow up. He noted appellant's complaint that the cold weather worsened her pain.

On March 26, 2019 Dr. Lopez noted that appellant related that her condition had only improved 20 percent since October 2018. He instructed her to have limited activity and continue wearing compression stockings. In addition, appellant was instructed to continue physical therapy.

In a note dated June 6, 2019, Dr. Oster related that appellant had a stabbing pain in her midfoot which occurred twice daily. He indicated that appellant could be having some post-traumatic arthritis in her midfoot joint from the traumatic event.

In notes dated July 2 and 30, 2019 from Dr. Luke Kovatch, a podiatrist, related that appellant had stabbing pain in the midfoot that occurred once or twice daily. Dr. Kovatch stated that her symptoms are a combination of midfoot joint inflammation and arthritis and neuritis resulting from the injury. In an addendum report dated August 9, 2019, he related that appellant's August 6, 2019 right ankle MRI scan did not reveal any real change. Dr. Kovatch noted diagnoses of right ankle mild Achilles paratenonitis, and no significant change in mild high T2 signal/edema in a type II accessory navicular which was nonspecific, and maybe secondary to abnormal stress response.

On August 5, 2019 Dr. Chang related that appellant's feet were painful and that she had stiffness everywhere. He also stated that she had plantar fasciitis and flat feet.

In a report dated December 9, 2019, Dr. Chang related that appellant had been under his care for over 10 years. During that time, appellant's condition had waxed and waned but her arthritis and pain had improved to the point that she could return to work in September 2018. Dr. Chang related that in October 2018 a panel of wood fell on her foot, which fractured her foot and required that she wear a boot for several weeks. Appellant then developed an imbalance in her body and was unable to the boot for the full period, and therefore required a longer period of time to recover from the injury. Dr. Chang also noted that appellant had to quit her job to fully recuperate.

By decision dated August 21, 2020, an OWCP hearing representative affirmed the February 24, 2020 decision. She found that appellant had not established that her diagnosed right foot conditions were causally related to the accepted employment incident.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>7</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.<sup>9</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation,

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<sup>3</sup> *Supra* note 2.

<sup>4</sup> *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right foot condition causally related to the accepted October 19, 2018 employment incident.

Appellant submitted progress reports from a number of treating podiatrists at the employing establishment medical clinic, which noted diagnoses including right foot accessory navicular with mild edema, subtle nondisplaced fracture, mild osteoarthritis of the MTP joint with mild hallux valgus, atrophy of the abductor digiti minimi muscle, crush neuropraxia of the common peroneal, and fibromyalgia. These reports provided no opinion regarding the cause of the diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>11</sup> These reports are therefore insufficient to establish appellant's claim.

In an undated letter received on March 26, 2019, Dr. Czurylo indicated that appellant's injury on October 19, 2018 exacerbated her fibromyalgia condition. OWCP received a note dated June 6, 2019 from Dr. Oster wherein he related that appellant could be having some post-traumatic arthritis in her midfoot joint from the traumatic event, and notes dated July 2, and 30, 2019 from Dr. Kovatch which stated that appellant's symptoms are a combination of midfoot joint inflammation and arthritis and neuritis resulting from the injury. Although these notes indicated that the October 19, 2018 incident could be a contributing factor to appellant's diagnosed right foot conditions, they did not explain how the accepted incident would have physiologically caused the diagnosed conditions. The Board has held that generalized statements do not establish causal relationship as they are unsupported by adequate medical rationale explaining the pathophysiologic mechanism by which the accepted employment duties caused, aggravated, or accelerated the employee's diagnosed medical conditions.<sup>12</sup> These reports are, therefore, insufficient to establish appellant's claim.

OWCP also received several reports from Dr. Chang, a rheumatologist. In a report dated March 11, 2019, Dr. Chang stated that it was very possible that appellant's foot injury and the hard boot she was treated with exacerbated her fibromyalgia. In a letter note December 9, 2019, he explained that appellant had been under his care for the past 10 years. Dr. Chang related that appellant had returned to work in September 2018, but in October a panel of wood fell on her foot and fractured her foot. He related that the fracture required appellant to wear a boot for several weeks, which caused imbalance and pain in her body. While Dr. Chang opined that the injury was a contributing factor to her fibromyalgia, he did not explain with rationale how the employment injury and subsequent treatment would have physiologically caused the diagnosed conditions. The

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<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *see L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>11</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</sup> *See A.P.*, Docket No. 19-0224 (issued July 11, 2019); *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

need for a rationalized medical opinion was particularly important because appellant had preexisting arthritis and fibromyalgia conditions.<sup>13</sup> The Board, therefore, finds that his reports are insufficient to establish appellant's claim.

Appellant submitted several radiology reports dated October 19 and November 16, 2018, June 6 and August 7, 2019. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.<sup>14</sup> For this reason, the above-mentioned radiology reports are insufficient to meet appellant's burden of proof.

As there is no rationalized medical evidence of record establishing that appellant's diagnosed right foot conditions were causally related to the accepted employment incident, appellant has not met her burden of proof to establish that the diagnosed condition was causally related to the accepted October 19, 2018 employment incident.

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 that her right foot conditions were causally related to the accepted October 19, 2018 employment incident.

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<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *J.G.*, Docket No. 20-0009 (issued September 28, 2020). *See also R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>14</sup> *See W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 21, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 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