

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

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<p><b>J.Z., Appellant</b></p> <p><b>and</b></p> <p><b>U.S. POSTAL SERVICE, TUSTIN POST OFFICE, Tustin, CA, Employer</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Docket No. 22-0829</b></p> <p><b>Issued: December 9, 2022</b></p>
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
 PATRICIA H. FITZGERALD, Deputy Chief Judge  
 VALERIE D. EVANS-HARRELL, Alternate Judge  
 JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On May 5, 2022 appellant filed a timely appeal from a February 15, 2022 merit decision of the Office of Workers’ Compensation Programs (OWCP). Pursuant to the Federal Employees’ Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

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

**FACTUAL HISTORY**

On February 28, 2019 appellant, then a 25-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a right foot condition due to factors of his federal employment including prolonged standing, walking, and mounting and dismounting from

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

his long life vehicle (LLV). He noted that he first became aware of his condition on January 4, 2019 and realized its relation to his federal employment on January 21, 2019. Appellant did not immediately stop work.

In a March 5, 2019 development letter, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In an undated response to the development letter, appellant indicated that his work duties included standing while casing mail, walking door to door while delivering mail, and mounting and dismounting his LLV. He noted that from 2015 through 2018 he was casing mail one to four hours a day, delivering mail approximately six hours a day, six to seven days a week. Appellant reported working subject to restrictions from another employment injury OWCP File No. xxxxxx284, commencing in 2018.<sup>2</sup> He indicated that he did not participate in outside activities.

A February 12, 2019 magnetic resonance imaging (MRI) scan of the right foot revealed no abnormalities.

On February 28, 2019 Dr. Edward Mittleman, a Board-certified family practitioner, treated appellant and diagnosed right foot sprain and right metatarsal contusion. Appellant reported working as a letter carrier and walking five to six miles every day. He described an onset of mild intermittent pain on the volar aspect of his right foot around December 31, 2018 when he exited his LLV and was delivering a package. Appellant reported repetitively exiting his LLV, requiring him to step down, place weight on his right foot, which increased in intensity and frequency. He noted constantly shifting the weight of his body into his feet as he moved from side-to-side, forwards and backwards, placing significant stretching and compounding pressures on the tissues in his feet. Appellant was continuously weight bearing during two to four hours of casing, lifting approximately five trays of flats weighing in excess of 10 pounds, placing them in a hamper, and transporting the hamper, which caused stresses upon the tissues of his feet. He described extracting the contents from the hamper placing significant stretching forces upon the plantar aspect of his feet and the tendons and ligaments of his ankles. Dr. Mittleman explained that, while walking and lifting during his mail route appellant was placing forward pressure upon his forefoot and first joint and the distal head of the first metatarsal of his right foot, stretching the ligaments and tendons and plantar fascia of the right foot. He opined that these activities resulted in appellant developing a right foot sprain and contusion injury to the first metatarsal of his right foot.

By decision dated April 22, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that his right foot condition was causally related to the accepted factors of his federal employment. Consequently, it found that the requirements had not been met to establish an injury and/or a medical condition causally related to the accepted factors of federal employment.

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<sup>2</sup> The record reveals that, under OWCP File No. xxxxxx284, OWCP accepted appellant's claim for unspecified sprain of left hip, initial encounter. OWCP has not administratively combined this file with the current claim, File No. xxxxxx834.

In a form report dated January 21, 2019, Dr. Mittleman noted treating appellant for right foot pain. Appellant reported that on December 31, 2018 when he exited his LLV to deliver a parcel he experienced pain on the volar aspect of his right foot that progressively worsened. Findings on physical examination revealed slight hallux valgus, slight beginning of a second hammertoe, tenderness on palpation of the plantar aspect of the first metatarsal distal head and first and third inner spaces between the distal heads of the metatarsals, and tenderness on flexion and extension of the first metatarsophalangeal (MTP) joint and the inner phalangeal joints of the great toe. Dr. Mittleman diagnosed right foot strain and contusion of the distal first metatarsal. He opined that the repetitive weightbearing on the right foot while casing mail two to four hours a day, delivering five routes, entering and exiting his LLV, ascending and descending steps, pushing a hamper, all placed significant forces on his right foot resulting in the pathology and symptomology he was experiencing. Dr. Mittleman returned appellant to limited-duty work. In duty status reports (Form CA-17) dated January 21 and 31, February 15 and 28, and October 9, 2019, he diagnosed right foot strain/sprain and contusion and released appellant to work with restrictions. On May 29, 2019 Dr. Mittleman described appellant's work duties, which included repetitively dismounting his LLV to deliver parcels and required him to step down with his weight onto his right foot upon exiting approximately six hours a day which caused spontaneous right foot pain on the volar aspect of his right foot. He opined that, while performing these duties, appellant placed stretching forces upon the tissues on the volar aspect of his right foot, which produced a pathology consistent with a right foot sprain.

On April 10, 2020 appellant requested reconsideration.

On April 14, 2020 OWCP referred appellant's medical record and the statement of accepted facts (SOAF) to the district medical adviser (DMA) for a determination as to whether he developed a right foot sprain and right metatarsal contusion causally related to factors of his federal employment. The SOAF accepted that as a letter carrier appellant would case mail one to four hours a day, deliver mail up to six hours a day, stand and walk for prolonged periods, and mount/dismount his LLV multiple times during the workday. The SOAF further noted that, as a letter carrier, appellant was responsible for preparing mail for delivery, standing at a case and ordering mail for delivery, pulling down mail and placing it into flats in the order in which the mail is to be delivered, loading the LLV and delivering mail by park-and-loop route (getting out of the vehicle and delivering mail on foot, or by a mounted route - delivering mail while still in the vehicle or a combination of the two routes). Additionally, it noted that no conditions had been accepted under the current claim file and that it had previously accepted appellant's claim under OWCP File No. xxxxxx284 for an unspecified sprain of the left hip.

On April 22, 2020 Dr. Nathan Hammel, a Board-certified orthopedic surgeon, serving as a DMA, reviewed the SOAF and the medical record. He noted that appellant's claim was accepted for other and unspecified complications of medical care and he sought expansion of his claim. The DMA noted that there was no indication of a work injury and the mechanism of injury was an activity of daily living incapable of producing the stated conditions. He further noted that the examination and imaging were completely normal indicating no objective injury. The DMA disagreed with Dr. Mittleman's assessment that the compilation of minimal objective findings supported an employment injury.

By decision dated April 23, 2020, OWCP denied modification of the April 22, 2019 decision.

On January 4, 2019 Edwin Enwia, a physician assistant, treated appellant for right foot pain, presenting with an aching and dull sensation on the ball of his right plantar region. He reported working as a postal employee who walked up to eight miles a day on his mail route. Mr. Enwia examined appellant and diagnosed unspecified sprain of right foot. In a return to work note of even date, he diagnosed foot sprain and excused appellant from work on January 4 and 5, 2019.<sup>3</sup> A January 4, 2019 x-ray of the right foot revealed no abnormalities.

In a progress note dated October 14, 2020, Dr. Mittleman noted findings on examination of tenderness on palpation of the right foot peroneus brevis. He diagnosed right foot strain and contusion of the distal first metatarsal and advised that appellant could return to work without restrictions. In a Form CA-17 dated December 24, 2020, Dr. Mittleman diagnosed right foot strain and returned appellant to work with restrictions.

On October 26, 2020 Dr. Basimah Khulusi, a Board-certified physiatrist, diagnosed right foot sprain and opined that appellant sustained an on-the-job injury from repetitive spraining of his foot. She disagreed with the findings of the DMA, Dr. Hammel, and indicated that the DMA did not examine appellant.

On December 29, 2020 appellant requested reconsideration.

By decision dated February 10, 2021, OWCP denied modification of the April 23, 2020 decision.

OWCP received additional evidence. On February 7, 2019 Dr. Stephen C. Wan, a podiatrist, evaluated appellant for a right foot injury. Appellant reported an onset of mild intermittent right foot pain on December 21, 2018 while delivering mail that progressed and by January 4, 2019 he was barely able to walk. He noted findings on physical examination of residual tenderness on palpation of the fibular sesamoid. Dr. Wan noted x-rays of the right foot revealed no abnormalities. He diagnosed strain of the right foot at the first MTP joint, initial encounter, and contusion of the right foot.

Dr. Khulusi treated appellant on February 24, 2021 and asserted that there was a conflict of opinion between the DMA and Dr. Wan.

On March 24, 2021 appellant requested reconsideration.

By decision dated June 15, 2021, OWCP denied modification of the February 10, 2021 decision.

In a Form CA-17 report dated July 15, 2021, Dr. Mittleman diagnosed right foot strain and returned appellant to work with restrictions.

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<sup>3</sup> The Board notes that the report listed the dates as January 4 and 5, 2018. However, this appears to be a typographical error.

In a form report dated August 18, 2021, Dr. Khulusi noted appellant still had right foot pain in the MTP area when he did a lot of walking. She noted that when appellant was standing and weightbearing his heels demonstrate pronation bilaterally, worse on the right. Dr. Khulusi advised that the distribution of weight on the right foot and ankle was abnormal and caused him to stress the first MTP joint more than one would expect with an anatomically correct alignment of the ankle joint. She diagnosed right foot strain and contusion of the distal first metatarsal and returned appellant to modified work on August 18, 2021. Dr. Khulusi treated appellant in follow-up on October 18, 2021 and noted that the congenital malalignment of his ankle joint when standing and weightbearing did not provide sufficient support of the weight causing additional stress on the medial aspect of the forefoot in the first MTP joint area. She opined that appellant's regular work activities include standing to case mail, pushing and pulling hampers, and walking on hard surfaces to deliver mail caused stress in the first MTP joint due to the deformities of the joints of his foot. In a Form CA-17 dated December 27, 2021, Dr. Khulusi diagnosed right foot strain and returned appellant to work with restrictions.

On December 1, 2021 appellant requested reconsideration.

By decision dated February 15, 2022, OWCP denied modification of the June 15, 2021 decision.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>4</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 of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>5</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>6</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>7</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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.

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</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>7</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).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> The opinion of the physician must be based upon 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 factors.<sup>9</sup>

### ANALYSIS

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

OWCP referred appellant's medical record and SOAF to the DMA, Dr. Hammel, for a determination as to whether he developed a right foot sprain and right metatarsal contusion causally related to factors of his federal employment. The April 14, 2020 SOAF provided to the DMA specifically noted that no conditions were accepted. It further described the duties of a letter carrier noting that appellant would case mail one to four hours a day, deliver mail up to six hours a day, stand and walk for prolonged periods of time during the course of the workday, and enter and exit his LLV multiple times during the workday.

In a report dated April 22, 2020, the DMA, in addressing appellant's requested conditions for acceptance, noted that there was no indication of an employment injury and the mechanism of injury was an activity of daily living incapable of producing the conditions. He did not acknowledge or accept the work duties of a letter carrier as described in the SOAF as factual. The DMA concluded that the acceptance of appellant's claim should not be expanded to include additional conditions.

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF. OWCP's procedures dictate that when an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF, which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.<sup>10</sup> As the DMA did not use the SOAF<sup>11</sup> as the framework in forming his opinion, his opinion is of diminished probative value.<sup>12</sup>

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

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<sup>8</sup> *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>10</sup> *Id.*; *see also N.W.*, Docket No. 16-1890 (issued June 5, 2017).

<sup>11</sup> *Id.*; *see also Y.D.*, Docket No. 17-0461 (issued July 11, 2017).

<sup>12</sup> *See S.T.*, Docket No. 18-1144 (issued August 9, 2019) (medical opinions based on an incomplete or inaccurate history are of limited probative value).

responsibility in the development of the evidence.<sup>13</sup> Once OWCP undertook development of the evidence by referring appellant to a DMA, it had the duty to secure an appropriate report addressing the relevant issues.<sup>14</sup> As Dr. Hammel did not base his report on an accurate factual history, the case shall be remanded to OWCP for further development of the medical evidence.

On remand OWCP shall prepare an updated SOAF and then obtain a supplemental opinion from the DMA. After 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 February 15, 2022 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 9, 2022  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>13</sup> See *D.M.*, Docket No. 19-1181 (issued December 2, 2019).

<sup>14</sup> *S.S.*, Docket No. 18-0397 (issued January 15, 2019); *Richard F. Williams*, 55 ECAB 343 (2004).