

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

_____)	
L.L., Appellant)	
)	
and)	Docket No. 21-0991
)	Issued: February 9, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Greensboro, NC, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 16, 2021 appellant filed a timely appeal from a June 2 2021 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a left ankle or foot condition causally related to the accepted June 4, 2018 employment incident.

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 an 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.*

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 7, 2018 appellant, then a 40-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on June 4, 2018, she injured her left ankle when she stepped into a hole in high grass as she was walking quickly to return to her mail truck after delivering a package while in the performance of duty. She explained that a dog started barking at her and she saw a snake which caused her to rush back to her vehicle. On the reverse side of the claim form, the employing establishment acknowledged that appellant was injured in the performance of duty and indicated that she had stopped work on June 5, 2018.

A June 5, 2018 duty status report (Form CA-17) from Dr. Stephen Kinard, a podiatrist, noted that appellant was injured when she turned her left ankle after she saw a snake and jumped back into her vehicle. Dr. Kinard diagnosed a left ankle sprain and advised that she could not return to work.

In a June 14, 2018 development letter, OWCP advised appellant of the factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. It afforded her 30 days to submit the requested factual and medical evidence.

A July 10, 2018 form signed by Dr. Kinard advised that appellant could not return to work until August 18, 2018.

By decision dated August 2, 2018, OWCP denied appellant's traumatic injury claim finding that the evidence of record was insufficient to establish that she sustained an injury in the performance of duty, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On August 15, 2018 appellant requested reconsideration and submitted additional medical evidence.

In a June 5, 2018 report, Dr. Kinard indicated that appellant complained of moderate left ankle pain. He noted that the onset of her left ankle pain was sudden and occurred while she was working on June 4, 2018 when "she stepped into a hole about one foot deep and sprained her ankle." Dr. Kinard conducted a physical examination of appellant's left ankle, which revealed pain upon palpation, dorsiflexion, plantarflexion, inversion, eversion, and range of motion. He noted an antalgic gait on the left side. Dr. Kinard indicated that appellant's x-ray displayed degenerative joint disease with mild spurring of the left ankle, but not fracture, and that an ultrasound revealed an area of inflammation with increased vascularity in the lateral left ankle. He diagnosed sprain of an unspecified ligament in the left ankle, left ankle contracture, other enthesopathy of the left foot, and pain in the left ankle and joints of the left foot. Dr. Kinard prescribed pain medication and provided appellant with a controlled ankle motion boot.

³ Docket No. 19-1550 (issued July 6, 2020).

In a July 10, 2018 report, Dr. Kinard recounted that appellant stated that her foot pain was worsening. He indicated that she claimed that while at work she tripped and injured her ankle while running from a dog. Dr. Kinard continued to diagnose sprain of an unspecified ligament in the left ankle, left ankle contracture, other enthesopathy of the left foot, and pain in the left ankle and joints of the left foot. He administered a steroid injection *via* ultrasound.

In an August 7, 2018 report, Dr. Kinard indicated that appellant continued to present with foot pain, but noted that it had improved since her last visit, which allowed her to increase her activity level and perform more activities of daily living. He continued to diagnose sprain of an unspecified ligament in the left ankle, left ankle contracture, other enthesopathy of the left foot, and pain in the left ankle and joints of the left foot. Dr. Kinard additionally diagnosed plantar fascial fibromatosis and administered an additional steroid injection *via* ultrasound.

By decision dated November 5, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim.

On April 12, 2019 appellant, through counsel, again requested reconsideration.

A July 10, 2018 return to work form by Dr. Kinard indicated that appellant could not return to work until August 18, 2018. In an August 7, 2018 return to work form, he noted that she could not return to work until September 10, 2018.

Dr. Kinard noted, in an August 23, 2018 report, that appellant had pain in the left ankle and joints of the left foot and indicated that he provided her with an ankle foot orthosis.

Dr. Kinard indicated in a September 4, 2018 report, that appellant complained of increasing foot pain. He continued to diagnose an unspecified ligament in the left ankle, left ankle contracture, other enthesopathy of the left foot, pain in the left ankle and joints of the left foot, and plantar fascial fibromatosis.

In a September 4, 2018 return to work form, Dr. Kinard held appellant off work until October 8, 2018. In an October 2, 2018 return to work form, he indicated that she could return to work full duty with no restrictions on October 18, 2018.

In reports dated October 2, 2018 and January 8, 2019, Dr. Kinard noted that appellant's foot pain was improving. He referenced the ankle and foot conditions he had diagnosed in his August 7, 2018 report.

In a February 12, 2019 report, Dr. Kinard noted that appellant's ankle pain was worsening. He listed diagnoses of left ankle contracture, left foot enthesopathy, left ankle sprain, and plantar fascial fibromatosis.

Appellant continued to follow up with Dr. Kinard through March 28, 2019 for left foot and ankle pain. In a report dated March 28, 2019, Dr. Kinard continued to diagnose a sprain of an unspecified ligament in the left ankle, left ankle contracture, other enthesopathy of the left foot, pain in the left ankle and joints of the left foot, plantar fascial fibromatosis, and "right" foot pain.

By decision dated May 6, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted June 4, 2018 employment incident.

On July 16, 2019 appellant appealed to the Board. By decision dated July 6, 2020, the Board affirmed OWCP's May 6, 2019 decision.⁴

On March 4, 2021 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a February 25, 2021 report, Dr. Kinard noted that he had not seen appellant for approximately two years, and that she related aching pain in the top and bottom of the left foot, which she attributed to a 2018 employment incident. On physical examination, he documented pain with palpation and range of motion of the left ankle and an antalgic gait. Dr. Kinard diagnosed other enthesopathy and primary osteoarthritis of the left foot and ankle, sprain of unspecified ligament of the left ankle, and pain in the left foot. He found that appellant had reached maximum medical improvement, and opined that she would always have some level of disability in the left ankle.

By decision dated June 2, 2021, OWCP denied modification of its prior 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,⁵ that the claim was timely filed within the applicable time limitation period of FECA, 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.⁶ 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.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the

⁴ *Id.*

⁵ *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *J.B.*, Docket No. 20-1566 (issued August 31, 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).

employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left ankle or foot condition causally related to the accepted June 4, 2018 employment incident.

Initially, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's May 6, 2019 decision, which was considered by the Board in its July 16, 2020 decision. Findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.¹¹

In his February 25, 2021 report, Dr. Kinard noted that appellant related aching pain in the top and bottom of the left foot, which she attributed to a 2018 employment incident. He diagnosed other enthesopathy and primary osteoarthritis of the left foot and ankle, sprain of unspecified ligament of the left ankle, and pain in the left foot. Dr. Kinard did not, however, provide an opinion on the issue of causal relationship. The Board has held that a medical report that does not offer an opinion on causal relationship is of no probative value and, thus, insufficient to establish the claim.¹²

As appellant has not submitted rationalized medical evidence establishing that a diagnosed left ankle or foot condition was causally related to the accepted June 4, 2018 employment incident, the Board finds that she has not met her burden of proof to establish her claim.¹³

⁸ *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).

⁹ *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).

¹⁰ *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).

¹¹ *A.A.*, Docket No. 20-1399 (issued March 10, 2021); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

¹² *T.D.*, Docket No. 19-1779 (issued March 9, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *See J.T.*, Docket No. 18-1755 (issued April 4, 2019); *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

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 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 ankle or foot condition causally related to the accepted June 4, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 2, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 2022
Washington, DC

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

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

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