

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

_____)
A.D., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
West Allis, WI, Employer)
_____)

Docket No. 21-0510
Issued: September 29, 2022

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, Deputy Chief Judge

JANICE B. ASKIN, Judge

JURISDICTION

On February 17, 2021 appellant, through counsel, filed a timely appeal from a February 3, 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.³

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 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.*

³ The Board notes that, following the February 3, 2021 decision, appellant submitted additional evidence. 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted March 25, 2019 employment incident.

FACTUAL HISTORY

On March 28, 2019 appellant, then a 32-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on March 25, 2019 she sprained her left lower leg when walking on an uneven surface while in the performance of duty. She stopped work on March 29, 2019.

In a statement dated March 29, 2019, appellant indicated that on March 25, 2019 she tripped on an uneven surface on the sidewalk and experienced left foot pain. She further indicated that the following Wednesday, she tripped up a flight of stairs while delivering mail, which sent pain through her body.

In work status reports dated April 1 and 9, 2019, Dr. Al P. Baltrusaitis, an osteopath, diagnosed left foot sprain and opined that appellant's condition had been caused by work. He noted a date of injury of March 25, 2019 and advised that she would be disabled from work from April 1 through 17, 2019.

On April 17 and May 16, 2019 Dr. Robert A. Rawski, a podiatrist, treated appellant for a lower extremity fracture. He held her off work beginning April 17, 2019 for six to eight weeks. An April 17, 2019 x-ray of the left foot revealed a healing stress fracture at the distal diaphysis of the fourth metatarsal.

In a May 30, 2019 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical information needed, including a comprehensive report from her physician regarding how a specific work incident contributed to her claimed injury. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received an April 17, 2019 report wherein Dr. Rawski prescribed a nonpneumatic walking boot for appellant. Dr. Rawski treated appellant in follow up on June 13, 2019 for a left foot injury sustained while working. He noted that x-rays obtained on April 17, 2019 revealed a stress fracture of the fourth metatarsal of the left foot. Dr. Rawski reviewed the x-ray obtained on March 28, 2019 and noted a very subtle irregularity in the same area where the stress fracture was confirmed by x-ray on April 17, 2019. He opined that the stress fracture was missed by the radiologist who read the images on March 28, 2019. Appellant reported sustaining an injury at work on March 25, 2019 that involved tripping and a sudden irregular movement about the foot, which commonly cause fractures, dislocations, or soft tissue trauma. He opined that the tripping injury at work on March 25, 2019 lead to the stress fracture of the fourth metatarsal left foot. Dr. Rawski further opined that there was a causal relationship between the medical diagnosis and the injury at work. He indicated that appellant sustained an injury on March 25, 2019 and x-rays were obtained on March 28, 2019 that showed a subtle osseous change to the fourth metatarsal of the left foot and noted that appellant continued to experience pain in the area and sought treatment from a foot and ankle specialist who obtained new x-rays that clearly illustrated a stress fracture in the area of pain. An x-ray of even date revealed smooth periosteal reaction identified without

residual fracture line involving the fourth metatarsal diaphysis similar to prior study. In a June 13, 2019 note, Dr. Rawski released appellant to return to regular-duty work on June 17, 2019.

In response to OWCP's development letter, appellant submitted a June 4, 2019 statement and indicated that she was walking and delivering her mail route when she tripped on an uneven sidewalk. She reported that her foot hurt instantly, but she thought the pain would resolve. Appellant indicated that the pain persisted and she sought medical treatment. She sustained no other injury between the date of injury and the date it was first reported to her supervisor on March 29, 2019. Appellant reported home treatment modalities of ice, elevation, pain medicine, and rest.

By decision dated July 8, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as described. It noted that she had not provided the exact location of the injury or the time of the injury.

OWCP subsequently received additional evidence. An March 28, 2019 x-ray of the right foot revealed no acute osseous abnormality.

In a report dated April 9, 2019, Dr. Baltrusaitis treated appellant for a March 25, 2019 left foot injury that occurred at work while she was walking on an uneven surface. Appellant reported subsequently tripping while ascending stairs on March 28, 2019. Dr. Baltrusaitis dispensed a postoperative shoe and held her off work for a week. Findings on examination revealed swelling to the dorsum of the left foot and tenderness to palpation between the third and fourth metatarsals of the left foot. Dr. Baltrusaitis released appellant to work with restrictions. He evaluated her again on August 14, 2019 and she reported sustaining another injury to her left foot at work on August 12, 2019 when a clerk pushed a pallet jack over the lateral aspect of her left foot. Dr. Baltrusaitis noted findings on examination of difficulty bearing weight, swelling over the dorsal and lateral foot, a limp, and tenderness over the fourth and fifth metatarsals. He diagnosed work-related contusion of the left foot and held appellant off work for one week.

In a report dated April 17, 2019, Dr. Rawski treated appellant for a left foot sprain, with findings on examination revealing left foot pain, mild edema in the area of the distal third and fourth metatarsal head of the left foot, pain with range of motion of the fourth metatarsophalangeal joint, and pain on palpation of the third interspace left foot. He reviewed the x-ray of the left ankle dated March 28, 2019, which revealed no fracture or dislocation and an April 17, 2019 x-ray, which revealed a stress fracture at the distal aspect of the fourth metatarsal. Dr. Rawski diagnosed injury of left foot initial encounter, left foot pain, left bunion, stress fracture of metatarsal bone of the left foot, and swelling of the left foot. He noted the physical examination and clinical findings were consistent with a stress fracture of the distal fourth metatarsal. Dr. Rawski dispensed a controlled ankle movement (CAM) walker and indicated that appellant was partial weight bearing. On May 16, 2019 he treated her in follow up and noted general improvement with regard to edema and pain in the area of the distal third and fourth metatarsal head of the left foot. An independent review and interpretation of the x-rays was obtained and confirmed a stress fracture of fourth metatarsal, bony callus. Dr. Rawski diagnosed stress fracture of metatarsal bone of the left foot, left foot pain, swelling of left foot, and left bunion. He continued use of the CAM walker with slow transition to an athletic shoe.

On June 13, 2019 Dr. Rawski noted continued improvement in the clinical and physical findings of the left foot with no edema noted or pain about the third and fourth metatarsophalangeal joint. X-rays revealed increased callus to the stress fracture site of the fourth metatarsal that appeared stable. Dr. Rawski diagnosed injury of the left foot, left foot pain, stress fracture of metatarsal bone of left foot, swelling of left foot, and left bunion. He returned appellant to work without restrictions.

On August 27, 2019 Dr. Rawski related that she sustained another left foot injury at work on August 12, 2019 when she was hit by a hand pallet jack on the top of her foot. X-rays of the left foot from August 14, 2019 revealed no acute findings. Dr. Rawski advised that appellant was still healing from stress fracture from the fourth metatarsal and recommended use of the CAM walker. On September 25, 2019 he noted that she was ambulating with the aid of a CAM walker with improvement in left foot swelling and pain. X-rays of the left foot revealed continued visualization of periosteal thickening of the fourth metatarsal from a healing stress fracture.

On July 17, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on November 12, 2019.

By decision dated January 17, 2020, OWCP modified the July 8, 2019 decision to find that appellant had established that the March 25, 2019 employment incident occurred as alleged; however, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted employment incident.

On September 4, 2020 appellant, through counsel, requested reconsideration.

In support thereof, appellant submitted a September 1, 2020 report from Dr. Rawski who reported initially treating her on April 17, 2019 secondary to a left foot injury sustained at work on March 25, 2019. Dr. Rawski ordered x-rays during that visit, which revealed a stress fracture of the fourth metatarsal, which he opined was likely missed by the radiologist on the original films of March 28, 2019. He described the mechanism of injury as stepping on uneven ground causing an inverted foot. Dr. Rawski explained that the body's physiologic response was likely to aggressively evert the foot to bring it back to neutral, which likely caused an imbalance to the muscle/tendon/ligament tension relationship. He opined that the imbalance was too much for the fourth metatarsal to handle causing a fracture.

By decision dated December 3, 2020, OWCP denied modification of the January 17, 2020 decision.

On December 29, 2020 appellant requested reconsideration.

In support thereof, appellant submitted a November 12, 2020 report from Dr. Rawski who reported treating her on October 15, 2020 for increased pain to the outside of the left ankle and outside column of the foot. Dr. Rawski opined that she may have developed peroneal tendinitis and sinus tarsi syndrome from favoring the foot secondary to pain from the injury. He further noted that on November 10, 2020 appellant reported some improvement with the steroid taper. Dr. Rawski recommended additional physical therapy.

By decision dated February 3, 2021, OWCP denied modification of the December 3, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 timely filed within the applicable time limitation period of FECA,⁵ 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 if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁸ The second component is whether the employment incident caused a personal injury.⁹

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on 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 incident.¹⁰ Neither the mere fact that, a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted March 25, 2019 employment incident.

⁴ *Supra* note 2.

⁵ *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 *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).

⁸ *T.M.*, Docket No. 19-0380 (issued June 26, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

¹¹ *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

In work status reports dated April 1 and 9, 2019, Dr. Baltrusaitis diagnosed left foot sprain and opined that appellant's condition had been caused by a work injury on March 25, 2019. Without explaining, physiologically, how the specific employment incident or employment factors caused or aggravated the diagnosed condition, Dr. Baltrusaitis' opinion on causal relationship is of limited probative value and insufficient to establish appellant's claim.¹²

Dr. Baltrusaitis treated appellant on April 9, 2019 for a March 25, 2019 left foot injury that occurred at work while she was walking on an uneven surface. Dr. Baltrusaitis evaluated her again on August 14, 2019 and diagnosed work-related contusion of the left foot and held appellant off work for one week. While Dr. Baltrusaitis indicated that appellant's left foot condition was work related, he failed to provide medical rationale explaining the basis of his opinion. 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.¹³ Thus, the Board finds that these reports are insufficient to meet appellant's burden of proof.

Dr. Rawski treated appellant on June 13, 2019 for a work-related left foot injury that involved tripping and a sudden irregular movement about the foot. He explained that the tripping injury led to the stress fracture of the fourth metatarsal left foot. Dr. Rawski opined that there was a causal relationship between the medical diagnosis and the employment incident. Although Dr. Rawski supported causal relationship, he did not offer sufficient medical rationale supporting causal relationship between appellant's left foot condition and the accepted March 25, 2019 work incident.¹⁴ The Board has held that a mere conclusion without the necessary rationale as to whether an injury is due to an accepted employment incident is insufficient to meet a claimant's burden of proof.¹⁵ As such, this report is of limited probative value.

In treatment notes dated April 17, May 16, and June 13, 2019, Dr. Rawski diagnosed stress fracture of metatarsal bone of the left foot, left foot pain, swelling of left foot, and left bunion. However, he did not offer an opinion on causal relationship in any of these reports. 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.¹⁶ Thus, the Board finds that these reports are insufficient to meet appellant's burden of proof.

On August 27, 2019 Dr. Rawski related that appellant sustained another left foot injury at work on August 12, 2019 and advised that she was still healing from stress fracture from the fourth metatarsal. On September 25, 2019 he noted improvement in left foot swelling and pain, but indicated that x-rays of the left foot revealed continued visualization of periosteal thickening of the fourth metatarsal from a healing stress fracture. Similarly, on November 12, 2020 Dr. Rawski reported treating appellant on October 15, 2020 for increased pain to the outside of the left ankle

¹² *D.H.*, Docket No. 17-1913 (issued December 13, 2018).

¹³ See *S.H.*, Docket No. 19-1128 (issued December 2, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁵ *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *E.L.*, Docket No. 17-1632 (issued January 3, 2018).

¹⁶ *Supra* note 14.

and opined that she may have developed peroneal tendinitis and sinus tarsi syndrome from favoring the foot secondary to pain from the injury. He, however, did not offer an opinion on causal relationship. Therefore, these reports are of no probative value and are insufficient to establish appellant's claim.¹⁷

On September 1, 2020 Dr. Rawski treated appellant for a work-related left foot injury that occurred on March 25, 2019 and diagnosed stress fracture of the fourth metatarsal. He explained that the body's physiologic response was likely to aggressively evert the foot to bring it back to neutral, which "likely" caused an imbalance to the muscle/tendon/ligament tension relationship causing a fracture of the fourth metatarsal. The Board has held that medical opinions that are speculative or equivocal are of diminished probative value.¹⁸ Therefore, this report is of no probative value.

Appellant also submitted diagnostic testing reports. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused any of the additional diagnosed conditions.¹⁹

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 a medical condition causally related to the accepted March 25, 2019 employment incident.

¹⁷ *Id.*

¹⁸ *H.A.*, Docket No. 18-1455 (issued August 23, 2019).

¹⁹ *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 29, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board