

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

L.B., Appellant)	
)	
and)	Docket No. 23-0961
)	Issued: December 15, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Fremont, CA, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On July 6, 2023 appellant, through counsel, filed a timely appeal from a February 17, 2023 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 17, 2023 decision, OWCP received 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 his burden of proof to establish a left lower extremity condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On March 2, 2022 appellant, then a 62-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed left-sided insertional Achilles tendinitis due to repetitive walking on his mail route. He indicated that he was able to work in the past as his left ankle pain was intermittent, but now the pain was constant. Appellant noted that he first became aware of his condition and realized its relation to his federal employment on December 29, 2021. He stopped work on March 2, 2022.

In a March 23, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed, provided a questionnaire for his completion, and afforded him 30 days to respond.

In a March 1, 2022 statement, appellant asserted that for the past two years he experienced periodic discomfort in his left ankle walking and carrying a satchel while delivering mail. He approximated that he took 5,000 to 16,000 steps a day, 5 days a week. Appellant stated that initially an ankle brace helped to stabilize the pain and that he underwent physical therapy and treated with a chiropractor on a biweekly basis. In late December 2021, the pain worsened, and he noticed a lump on his left heel. Appellant indicated that his podiatrist diagnosed a bone spur in his left heel and insertional Achilles tendinitis. He advised that he had restrictions relative to standing/walking, and wore a walking boot to stabilize his heel and ankle.

In a February 20, 2022 progress note, Dr. Sara Karamloo, a Board-certified podiatric foot and ankle surgeon, reported that appellant, a mail carrier, recently had cardiac bypass surgery and was previously walking 12 miles a day in his job. Appellant returned to work with a new mail route that was not all walking. Dr. Karamloo provided examination findings and diagnosed left foot calcaneal spur, and Achilles tendinitis, left leg.

In a March 1, 2022 note and progress report, Dr. Karamloo indicated that appellant was initially seen in her office on December 29, 2021 due to left ankle and heel pain that he developed as a mail carrier. She noted results of x-rays and a February 25, 2022 magnetic resonance imaging (MRI) scan and diagnosed with a bone spur on the left heel coupled with plantar fasciitis. Dr. Karamloo placed appellant off work. In March 1, 21, and 23, and April 8, 2022 reports, she continued to diagnose left leg Achilles tendinitis, and left foot calcaneal spur. Dr. Karamloo also continued to hold appellant off work.

Physical therapy reports dated March 25 and April 26, 2022 were also received.

In an April 27, 2022 note, Dr. Karamloo indicated that appellant had been under her care since December 29, 2021 for bone spur and multiple torn tendons in his left ankle. She noted appellant was on doctor's orders to include home rest, limited walking while wearing his controlled ankle movement (CAM) walker boot and physical therapy twice a week.

By decision dated May 3, 2022, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that his diagnosed conditions were causally related to the accepted factors of his federal employment.

On May 18, 2022 appellant requested reconsideration.

In a May 4, 2022 report, Dr. Karamloo reported that appellant, a city mail carrier, had a route that consisted of walking approximately 12 miles per day, 5 days per week. She opined that as a result of that walking and overuse, he developed a calcaneal bone spur in his left ankle that became inflamed and caused multiple tears in his Achilles tendon. Dr. Karamloo noted that appellant continued to work, but the persistent condition had increased in pain and swelling, and in December it became too much for him to handle without additional medical treatment. She indicated that he had been under her care for the past few months with the goal of returning him to work.

In a June 2, 2022 report, Dr. Karamloo noted appellant's medical treatment for bone spur and multiple torn tendons in his left ankle. She indicated that two weeks ago, he twisted his left knee and calf while walking up the stairs at his home which re-aggravated his tendon injury and strained his left calf muscle which caused his current issue of being unable to put full weight on his left foot and trouble walking without limping.

In June 30 and July 19, 2022 reports, Dr. Karamloo advised that appellant should remain off work with continued physical therapy and increased daily walking. This would be followed by conservative return to duties with gradual increases in duties and workload to avoid re-injury.

OWCP also continued to receive physical therapy notes.

By decision dated August 16, 2022, OWCP denied modification of May 3, 2022 decision. It found that the medical evidence of record was insufficient to establish causal relationship between the diagnosed left lower extremity conditions and the accepted work factors.

OWCP continued to receive medical evidence. In an August 8, 2022 report, Dr. Karamloo released appellant to limited-duty work of three hours a day, every other day with lifting limitations of up to 10 pounds with incremental increases in workload of casing and delivery of mail. Appellant returned to light-duty work. In August 22 and September 9, 2022 reports, Dr. Karamloo recommended that he increase to working two days in a row at three hours per day of limited-duty workload followed by a day of rest and physical therapy.

A February 25, 2022 MRI scan of appellant's left ankle demonstrated marked thickening of the distal Achilles tendon, edema within the calcaneus deep to the insertion, marked peritendinitis of the flexor pollicis longus tendon, and extensive subcutaneous edema medially and laterally. A September 14, 2022 left ankle MRI scan included findings consistent with plantar fasciitis, medium-sized calcaneal heel enthesophyte, severe Achilles tendinosis with near complete tear, and tenosynovitis of various tendons and partial tear of various ligaments.

In an October 3, 2022 report, Dr. Spencer B. Tilley, Board-certified in family medicine, indicated that he was appellant's primary care physician and that appellant continued under doctors' orders for bone spur and multiple torn tendons in his left ankle. He discussed appellant's

MRI scan findings and referred appellant to an orthopedic surgeon as surgery would probably be necessary. Dr. Tilley opined that appellant may continue his limited work schedule and duties of two days on and one day off for four hours per day for the next week.

In an October 11, 2022 report, Dr. Joshua Van Gompel, a podiatric foot and ankle surgery specialist, indicated that the two MRI scans of appellant's left ankle demonstrated multiple tears to the peroneal and Achilles tendons along with some bone spur formation. He recommended surgery as appellant's peroneal tendon was close to rupturing (90 percent) and advised that appellant could not return to work before the scheduled surgery of November 1, 2022.

On December 20, 2022 appellant, through his representative, requested reconsideration.

In a December 16, 2022 report, Dr. Tilley opined that appellant's work duties caused a calcaneal bone spur that became inflamed and caused multiple tears in his left Achilles tendon, which led to his November 1, 2022 surgery. He indicated that appellant's postal duties included walking 8 to 10 miles per workday delivering mail, heavy packages, catalogs, and seasonal advertisement pieces. Dr. Tilley stated that the repetitive walking combined with approximately 15 pounds of satchel weight caused the development of appellant's bone spur in his left heel which eventually led to multiple tears in his Achilles tendon. He explained the physiological process of how heel strike, pronation and mid-stance on the weight bearing (especially with additional weight) increased the longitudinal arch area which, in turn, caused pulling of the plantar fascia more at the calcaneal origin than its metatarsal insertion and associated pain. Dr. Tilley indicated that after appellant's release in August to return to limited-duty capacity with incremental increases in hours and days, appellant's pain became unbearable, and his limp grew more severe despite continued doctor visits, medical treatment and physical therapy. He stated that when he saw appellant in October, he ordered an MRI scan, which demonstrated a 94 percent torn tendon near rupture, which required surgery. Dr. Tilley also discussed appellant's Parkinson's disease and opined that the symptoms of that disease did not have any effect on how appellant's bone spur developed that caused tears in his Achilles tendon.

In a December 20, 2022 report, Dr. Charan K. Singh, Board-certified in neurology, opined that appellant's Parkinson's disease symptoms, which included rigidity of his left arm and hand tremors, did not contribute to his torn Achilles tendons. Dr. Singh noted that appellant's medications and his city mail carrier duties helped in controlling his Parkinson's disease symptoms.

By decision dated February 17, 2023, OWCP denied modification of its prior 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 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

⁴ *Supra* note 2.

limitation 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 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 employment factors identified by the claimant.⁸

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship 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

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, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹¹

ANALYSIS

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

In his December 16, 2022 report, Dr. Tilley opined that appellant's work duties contributed to his calcaneal bone spur that became inflamed and caused multiple tears in his left Achilles tendon. He detailed a history of appellant's medical treatment for his calcaneal bone spur and

⁵ *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *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.S.*, Docket No. 18-0657 (issued February 26, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *L.J.*, Docket No. 19-1343 (issued February 26, 2020); *R.R.*, Docket No. 18-0914 (issued February 24, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁹ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *R.G.*, Docket No. 18-0792 (issued March 11, 2020); *D.J.*, Docket No. 19-1301 (issued January 29, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ 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).

multiple tears in his left Achilles tendon and provided the factual evolution of events from appellant's full-duty postal work, to the May 2021 twisting of his left ankle and calf muscle while walking up the stairs at home, to his August 2022 release to work in a limited capacity with incremental increases in workload and days, and to his November 1, 2022 surgery. The Board has held that a medical opinion must explain how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.¹² Dr. Tilley provided rationale explaining how, physiologically, the specific movements involved in repetitive walking and the additional weight of carrying a satchel caused the development and inflammation of a calcaneal bone spur which eventually led to multiple tears in the left Achilles tendon. He also noted that appellant's preexisting Parkinson's disease did not lead to the development of the bone spur that caused tears in his Achilles tendon.

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹³ OWCP has an obligation to see that justice is done.¹⁴ While Dr. Tilley's opinion is insufficient to establish the claim, it is sufficient to require further development of the medical evidence.¹⁵ The case must therefore be remanded for further development.

On remand, OWCP shall refer appellant to a specialist in an appropriate field of medicine, along with the case record and a statement of accepted facts. Its referral physician shall provide a well-rationalized opinion as to whether appellant's diagnosed conditions as related by Dr. Tilley were causally related to or aggravated by factors of his federal employment, including repetitive walking and carrying weighted satchels. 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. Tilley. After this and other such further development of the case record as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹² *S.C.*, Docket No. 20-0492 (issued May 6, 2021); *R.S.*, Docket No. 19-1774 (issued April 3, 2020).

¹³ *See id.* *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁴ *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁵ *John J. Carlone, id.*

ORDER

IT IS HEREBY ORDERED THAT the February 17, 2023 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 15, 2023
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