

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

E.T., Appellant)	
)	
and)	Docket No. 22-1085
)	Issued: January 18, 2023
U.S. POSTAL SERVICE, BEDFORD PARK)	
POST OFFICE, Bedford Park, IL, Employer)	
)	

Appearances:
Appellant, pro se
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
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On July 14, 2022 appellant filed a timely appeal from a June 14, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition in connection with the accepted factors of her federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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.*

FACTUAL HISTORY

On April 28, 2022 appellant, then a 51-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed swollen ankles and knees due to factors of her federal employment, including extensive walking. She noted that she first became aware of her condition on December 5, 2021 and realized its relation to her federal employment on January 7, 2022. Appellant stopped work on January 7, 2022.

In a work status note dated January 7, 2022, Dr. Harun Durudogan, an osteopath specializing in orthopedic surgery, reported a diagnosis of acute bilateral ankle pain and indicated that appellant was totally disabled.

In a March 8, 2022 work status note, Dr. Durudogan indicated that appellant could return to full-duty work for no more than eight hours per day.

In work status notes dated April 1 and 22, 2022, Dr. Durudogan reported a diagnosis of pain and swelling of right knee. He indicated that appellant could return to work with restrictions of no stair climbing.

In an April 29, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical and factual evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary information.

Appellant submitted progress notes dated January 7 and February 8, 2022 by Dr. Durudogan who indicated that she was evaluated for complaints of left knee and bilateral ankle pain. Dr. Durudogan examined her left knee on February 8, 2022 and observed mild effusion and tenderness to palpation at the medial joint line and medial femoral condyle. Examination of appellant's right knee revealed tenderness to palpation at the lateral joint line and medial femoral condyle. Dr. Durudogan diagnosed acute bilateral knee pain, acute left knee pain, left knee primary osteoarthritis, bilateral plantar fasciitis, and acute medial meniscus tear of the left knee.

In progress notes dated February 18 through April 22, 2022, Dr. Durudogan indicated that appellant was seen for follow up of left knee pain. He reported that she underwent a left knee magnetic resonance imaging (MRI) scan and diagnosed primary osteoarthritis of both knees.

In a response dated May 4, 2022, appellant asserted that walking and ascending stairs at work for over six years had made her knees and feet swell.

By decision dated June 14, 2022, OWCP denied appellant's occupational disease claim. It accepted her employment factors, but denied the claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted factors of employment. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶

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) rationalized medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.⁸ 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 the specific employment factor(s) identified by the employee.⁹ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹⁰

³ *Supra* note 1.

⁴ *D.D.*, Docket No. 19-1715 (issued December 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).

⁵ *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *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).

⁷ *T.M.*, Docket No. 20-0712 (issued November 10, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁸ *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *D.R.*, Docket No. 19-0954 (issued October 25, 2019); *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

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

In progress notes dated January 7 and February 8, 2022, Dr. Durudogan noted his examination of appellant and diagnosed acute bilateral knee pain, acute left knee pain, left knee primary osteoarthritis, bilateral plantar fasciitis, and acute medial meniscus tear of the left knee. In progress notes dated February 18 through April 22, 2022, he noted her left knee MRI scan and diagnosed primary osteoarthritis of both knees. The Board finds, therefore, that the reports by Dr. Durudogan are sufficient to establish diagnoses of bilateral primary osteoarthritis, left knee medial meniscus tear, and bilateral plantar fasciitis.¹¹

As the medical evidence of record establishes diagnosed medical conditions, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship.¹² Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish medical conditions in connection with the accepted employment factors. The Board further finds, however, that the case is not in posture for decision as to whether her diagnosed conditions are causally related to the accepted factors of employment.

¹¹ See *E.L.*, Docket No. 21-0587 (issued July 6, 2022); see also *T.C.*, Docket No. 17-0624 (issued December 19, 2017).

¹² See *S.R.*, Docket No. 22-0421 (issued July 15, 2022); *S.A.*, Docket No. 20-1498 (issued March 11, 2021).

ORDER

IT IS HEREBY ORDERED THAT the June 14, 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: January 18, 2023
Washington, DC

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

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

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