United States Department of Labor
Employees' Compensation Appeals Board

F.U., Appellant	)	
and	)	**Docket No. 22-1205**
	)	**Issued: January 9, 2023**
U.S. POSTAL SERVICE, PLEASANTVILLE POST OFFICE, Pleasantville, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 18, 2022 appellant filed a timely appeal from a May 24, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[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*.

ISSUE

The issue is whether appellant has met her burden of proof to establish a right ankle condition causally related to the accepted December 20, 2018 employment incident.

FACTUAL HISTORY

On June 30, 2020 appellant, then a 53-year-old rural delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on December 20, 2018[3] she injured her right ankle when she returned to her delivery truck after delivering an extremely high volume of mail and parcels while in the performance of duty. She explained that she heard a popping sound while climbing into her truck, followed by excruciating pain from her ankle up her leg and swelling, which made it difficult for her to stand and walk.[4] Appellant did not stop work.

In a July 7, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a factual questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated August 11, 2020, OWCP denied appellant's traumatic injury claim, finding that she had not submitted sufficient evidence to establish a medical diagnosis in connection with the accepted January 2, 2019 employment incident. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

On August 12, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which took place on December 16, 2020.

Appellant continued to submit evidence, including prescriptions from Dr. Jack Bondi, a podiatrist, dated January 3, 2019 through July 23, 2020, holding her off work due to Achilles tendinosis.

In an October 2, 2020 medical narrative, Dr. Bondi noted that appellant first presented to his office on August 6, 2015 for a prior work injury to her right ankle and subsequently underwent surgical intervention on April 7, 2017. He related that she made a slow recovery after surgery and returned to work without restrictions, however, on or after December 25, 2019, while stepping into her work truck, she felt a sudden pop in her right ankle. Dr. Bondi indicated that appellant reported that she worked through the pain until she could no longer do so. He diagnosed acute tendinosis that evolved into a chronic condition and concluded that she sustained severe and lasting injuries which were a direct and causal result of her job.

[3] Appellant's claim form noted January 2, 2019 as the date of injury; however, the record indicates December 20, 2018 is the correct date of injury.

[4] Appellant has a previously accepted June 10, 2015 traumatic injury claim for a right ankle sprain under OWCP File No. xxxxxx452. OWCP subsequently combined the present claim, OWCP File No. xxxxxx965, with the prior claim under OWCP File No. xxxxxx452 serving as the master file.

In a December 29, 2020 letter, appellant asserted that she had submitted medical evidence from her attending physician and that the employing establishment did not properly handle her disability claim nor provide adequate guidance to her during her recovery. She also alleged that the employing establishment engaged in unprofessional behavior and falsely accused her of making untrue statements.

By decision dated February 24, 2021, the hearing representative modified OWCP's January 19, 2021 decision to find that appellant had established a medical diagnosis in connection with the accepted December 20, 2018 employment incident. However, the claim remained denied finding that the evidence of record did not establish a causal relationship between the diagnosed condition and accepted employment incident. The hearing representative further modified the date of injury from January 2, 2019 to December 20, 2018 and instructed OWCP to administratively combine the present claim in OWCP File No. xxxxxx965 with appellant's previously accepted right ankle injury under OWCP File No. xxxxxx452.

Appellant continued to submit evidence including a March 30, 2021 visit note in which Dr. Bondi assessed right foot pain. OWCP also received a form report of even date from Dr. Bondi with an addendum signed by him on September 27, 2021 providing work restrictions.

In an unsigned July 28, 2021 return to duty form, an unsigned note from Dr. Bondi's office indicated that appellant was released to work with restrictions.

In an October 12, 2021 visit note, Dr. Bondi reiterated his prior assessment and recommended rest, ice, compression, elevation, and advised appellant to wear a brace in the evening.

On February 23, 2022 appellant, through counsel, requested reconsideration of the February 24, 2021 decision and submitted additional evidence.

In a February 22, 2022 addendum to his October 2, 2020 report, Dr. Bondi clarified that the date of injury was actually December 20, 2018 and noted that appellant returned to work on May 1, 2018 after recovering from surgical repair of her right ankle on April 7, 2017. He related that on December 20, 2018 she felt a pop in her right ankle while stepping into her truck. Dr. Bondi explained that the act of stepping up requires the gastrocnemius/soleus complex to fire rapidly and with significant force, which is the mechanism by which the Achilles tendon forces the heel to push upward. He opined that, given appellant's atrophy in this area from her prior surgery, the act of forced plantarflexion can produce micro-tearing of the Achilles and tendinosis, and that this force creates a mechanism known as ballistic stretching, which in a vulnerable tendon can create injury. Dr. Bondi further opined that ballistic stretching requires tendons to stretch beyond their normal range of motion and initiates a situation where the muscle tendon complex both stretches and contracts simultaneously, thus creating the injury. He concluded that, in his medical opinion, appellant sustained severe and lasting injuries as a direct and causal result of her employment.

By decision dated May 24, 2022, OWCP denied modification of its February 24, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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,[6] 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.[7] 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.[8]

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 whether he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[9]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[10] 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 incident identified by the claimant.[11]

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.[12]

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[5] *Supra* note 2.

[6] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *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).

[8] *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).

[9] *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).

[10] *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).

[11] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

ANALYSIS

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

In his February 22, 2022 report, Dr. Bondi noted that on December 20, 2018 appellant stepped into her truck and felt a pop in her right ankle. He explained that the act of stepping up caused the gastrocnemius/soleus complex to fire rapidly with significant force, which is the mechanism by which the Achilles tendon forces the heel to push upward. Dr. Bondi opined that, given appellant's atrophy in this area from her prior surgery, the act of forced plantarflexion can produce micro-tearing of the Achilles, tendinosis, and ballistic stretching, wherein the tendons stretch beyond their normal range and the muscle tendon complex stretches and contracts simultaneously, thus creating the injury. He further opined that ballistic stretching requires tendons to stretch beyond their normal range of motion and initiates a situation where the muscle tendon complex both stretches and contracts simultaneously, thus creating the injury. Dr. Bondi concluded that, in his medical opinion, appellant sustained severe and lasting injuries as a direct and causal result of her December 20, 2018 employment incident.

The Board finds that Dr. Bondi's February 22, 2022 report is sufficient to require further development of the medical evidence. Dr. Bondi provided an affirmative opinion on causal relationship and a pathophysiological explanation as to how the accepted December 20, 2018 employment incident caused appellant's diagnosed medical condition and aggravated her preexisting right ankle condition. While his report is not completely rationalized to meet appellant's burden of proof to establish her claim, it raises an uncontroverted inference between her diagnosed medical conditions and the accepted employment incident and is, therefore, sufficient to require OWCP to further develop her claim.[13]

The Board notes that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.[14] It has an obligation to see that justice is done.[15]

The Board will, therefore, remand the case to OWCP for further development of the medical evidence. On remand, OWCP shall refer appellant, a statement of accepted facts and the medical evidence of record to a specialist in the appropriate field of medicine. The referral physician shall provide a rationalized opinion on whether the diagnosed conditions are causally related to the accepted employment incident. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why his or her opinion differs from that of Dr. Bondi. Following this and any further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

[13] *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *H.T.*, Docket No. 18-0979 (issued February 4, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); *John J. Carlone*, *supra* note 9.

[14] *Id*.

[15] *Id*.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 24, 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 9, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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