

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

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<b>S.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 24-0064</b>
	)	<b>Issued: February 28, 2024</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Kansas City, MO, Employer</b>	)	
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*Appearances:*

*Alan J. Shapiro, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 31, 2023 appellant filed a timely appeal from an October 23, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

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

## FACTUAL HISTORY

On November 30, 2022 appellant, then a 53-year-old laborer custodian, filed an occupational disease claim (Form CA-2) alleging that the soles of her feet hurt, mostly in the arch areas, while she performed the duties of her federal employment. She noted that she first became aware of her condition on November 23, 2022 and realized its relation to her federal employment on November 30, 2022. Appellant did not stop work.

In a development letter dated December 15, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a separate development letter also dated December 15, 2022, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor. It afforded the employing establishment 30 days to submit the requested evidence.

OWCP received a copy of appellant's job description.

By decision dated January 19, 2023, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a medical condition in connection with the alleged work factors. It determined therefore that the requirements had not been met to establish an injury as defined by FECA.

Dr. Brian Ware, a podiatrist, submitted progress reports and work excuses dated December 8, 2022, January 10 and 17, February 7, 14, and 27, March 24, April 26, May 31, and August 2, 2023. In his December 8, 2022 report, he noted that appellant worked as a custodian at the employing establishment for about 60 hours per week. Dr. Ware related that, during the last year, she had gone from 40-hour to 60-hour workweeks and was constantly on her feet. He noted that appellant had pain in the plantar aspect of both feet, mainly on the left, and diagnosed bilateral plantar fasciitis. Dr. Ware also submitted December 8, 2022 x-rays of her feet. In his continuing progress reports, he noted appellant's complaints and reiterated her diagnosis.

In a December 16, 2022 attending physician's report (Form CA-20), Dr. Ware diagnosed plantar fasciitis of both feet. Regarding history of injury, he noted increased time at work on appellant's feet. Dr. Ware checked a box and marked "Yes" that he believed that the conditions were caused or aggravated by an employment activity and filled in "aggravated."

On January 20, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on July 10, 2023.

By decision dated September 19, 2023, an OWCP hearing representative affirmed the January 19, 2023 OWCP decision, as modified, finding that the evidence of record contained a medical diagnosis establishing the medical component of fact of injury. The claim remained denied, however, as the evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted factors of her federal employment.

On October 19, 2023 appellant, through counsel, requested reconsideration.

In an October 4, 2023 report, Dr. Ware noted that appellant was diagnosed with bilateral plantar fasciitis, bilateral posterior tibial tendinitis of the legs, plantar fascial fibromatosis, bilateral gastric equinus deformity, and bilateral contracture of the ankles. He opined that her work duties combined with compensatory mechanisms caused aggravation of the tendons and ligaments surrounding her feet and ankles, bilaterally. Dr. Ware explained that common causes of tibialis tendinitis included overuse, improper footwear, sudden increases in activity level, and trauma to the foot or ankle. He also noted that common symptoms of tibialis tendinitis include top of foot pain, swelling, and tenderness along the front of the ankle and foot, particularly during activity. Dr. Ware explained that plantar fasciitis was the inflammation of the plantar fascia tissue in the foot used during walking and foot movement. He noted that plantar fasciitis can be caused by several factors, including type of shoes, foot structure, overuse, and type of walking surface. Dr. Ware explained that the primary symptom of plantar fasciitis was heel pain. He indicated that supportive footwear and custom orthotics were needed, along with physical therapy to alleviate the stress and aggravation caused by improper work footwear and trauma to the feet bilaterally. OWCP also received an October 11, 2023 work restriction request from Dr. Ware.

By decision dated October 23, 2023, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *See R.W.*, Docket No. 22-0043 (issued April 25, 2022); *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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 identified employment factors.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factors identified by the claimant.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

In support of her claim, appellant submitted several reports from Dr. Ware. In an October 4, 2023 report, Dr. Ware noted that she was diagnosed with bilateral plantar fasciitis, bilateral posterior tibial tendinitis of the legs, plantar fascial fibromatosis, bilateral gastric equinus deformity, and bilateral contracture of the ankles. However, he only provided general definitions of these conditions and their common causes. Dr. Ware did not provide a rationalized explanation regarding how or why the diagnosed conditions were caused by appellant's accepted employment factors. His report failed to identify specific work factors applicable to appellant and failed to explain the pathophysiological process by which the accepted employment factors caused or contributed to the diagnosed condition.<sup>10</sup> A medical report should offer a medically-sound and rationalized explanation by the physician of how specific employment factors physiologically caused or aggravated the diagnosed conditions.<sup>11</sup> The Board therefore finds that Dr. Ware's October 4, 2023 report is insufficient to establish causal relationship.

In his December 8, 2022 report, Dr. Ware noted that appellant's hours had increased from 40 to 60 hours per week and he diagnosed plantar fasciitis. However, he did not provide a

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<sup>7</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *see also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *L.F.*, Docket No. 19-1905 (issued April 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>9</sup> *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>10</sup> *See S.C.*, Docket No. 21-0929 (issued April 28, 2023); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *J.C.*, Docket No. 18-1474 (issued March 20, 2019); *M.M.*, Docket No. 15-0607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

<sup>11</sup> *See T.L.*, Docket No. 23-0073 (issued January 9, 2023); *V.D.*, Docket No. 20-0884 (issued February 12, 2021); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

rationalized medical explaining how her increased work hours caused the diagnosed plantar fasciitis. This report therefore is insufficient to meet appellant's burden of proof.<sup>12</sup>

In a December 16, 2022 Form CA-20, Dr. Ware, diagnosed plantar fasciitis of both feet, noted that appellant had increased time at work on her feet, and indicated by checking a box marked "Yes" that the diagnosed condition was caused or aggravated by an employment activity. However, he did not provide medical rationale to establish that the accepted employment factors caused the diagnosed condition. The Board has held that a report that indicates causal relationship with a checkmark is of diminished probative value and insufficient to establish causal relationship.<sup>13</sup>

Dr. Ware's treatment notes and work excuse notes dated December 8, 2022, and January 10 and 17, February 7, 14, and 27, March 24, April 26, May 31, and August 2, 2023, do not contain an opinion on causal relationship. The Board has held that a medical report that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>14</sup>

OWCP also received December 8, 2022 x-rays of appellant's feet. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment factors caused a diagnosed condition.<sup>15</sup>

As the medical evidence of record does not contain rationalized medical opinion evidence establishing a medical condition causally related to the accepted employment factors, the Board finds that appellant has not met her burden of proof.

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 factors of her federal employment.

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<sup>12</sup> *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *M.L.*, Docket No. 19-0813 (issued November 26, 2019); *see B.R.*, Docket No. 17-0294 (issued May 11, 2018).

<sup>13</sup> *See R.V.*, Docket No. 21-0976 (issued July 18, 2023); *D.S.*, Docket No. 21-0037 (issued May 27, 2021); *S.C.*, Docket No. 20-0327 (issued May 6, 2021); *A.R.*, Docket No. 19-0465 (issued August 10, 2020); *Gary J. Watling*, 52 ECAB 278 (2001); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

<sup>14</sup> *See C.H.*, Docket No. 22-1186 (December 22, 2022); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>15</sup> *W.L.*, Docket No. 20-1589 (issued August 26, 2021); *A.P.*, Docket No. 18-1690 (issued December 12, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 23, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 28, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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