United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 23-1119**
	)	**Issued: March 18, 2024**
U.S. POSTAL SERVICE, POST OFFICE, Cincinnati, OH, 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 August 22, 2023 appellant filed a timely appeal from a February 27, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal

[1] Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, she questioned how OWCP hearing representative's actions and discussed the evidence that she believed supported her claim. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

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.[3]

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include a left ankle fracture as causally related to the accepted June 8, 1995 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.[4] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

OWCP accepted that on June 8, 1995 appellant, then a 33-year-old temporary transitional clerk, sustained a left ankle sprain and bone contusion of the medial talus. Appellant worked intermittently until April 19, 1996, when the employing establishment did not renew her appointment. OWCP subsequently expanded the acceptance of the claim to include reflex sympathetic dystrophy (RSD) of the left ankle and other psychogenic pain. It paid appellant wage-loss compensation on the periodic rolls.

An x-ray of the left ankle obtained on June 18, 1995 showed no bone abnormality.[5]

In a note dated June 27, 1995, Dr. Michael J. Rozen, a Board-certified orthopedic surgeon, recounted appellant's history of a twisting injury to her left ankle. He reviewed x-rays obtained on June 18, 1995, which did not indicate a fracture. Dr. Rozen diagnosed a left ankle sprain.

An x-ray of the left ankle dated August 24, 1995 was also interpreted as normal.

In an August 24, 1995 report, Dr. Rozen noted bruising of the left talus/calcaneus and provided work restrictions.

An August 25, 1995 magnetic resonance imaging (MRI) scan of the lower extremity demonstrated an abnormal signal within the medial talus and in the mid calcaneus on both sides of the subtalar joint consistent with bone bruising and a small tibiotalar joint effusion.

---

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that, following the February 27, 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.*

[4] Docket No. 98-1782 (issued January 4, 2000).

[5] Another x-ray of the left ankle was interpreted as normal; however, the date of the x-ray is illegible.

On August 29, 1995 Dr. Rozen advised that an MRI scan demonstrated a bone bruise and opined that appellant could work light duty. In a September 7, 1995 attending physician report (Form CA-20), he advised that x-rays were negative for a fracture and diagnosed a sprain of the left lateral collateral ankle ligament.

On September 29, 1995 Dr. Jonathan W. Bell, a Board-certified orthopedic surgeon, noted that an MRI scan demonstrated a talar bruise. He referred appellant to Dr. James A. Amis, a Board-certified orthopedic surgeon, for consultation.

On October 19, 1995 Dr. Amis evaluated appellant for left ankle pain. He obtained a history of the June 9, 1995 employment injury. Dr. Amis noted that x-rays were normal with no evidence of fractures or dislocations. He diagnosed left peroneal tendinitis and impending RSD of the left foot and ankle.

A three-phase bone scan of the left ankle, obtained on October 25, 1995 revealed increased activity near the distal left tibia and adjacent left talus, and localized activity near the sesamoid under the head of each first metatarsal on the medial side and in the distal phalanx of each great toe.

On October 26, 1995 Dr. Rozen advised that a bone scan showed increased activity in the distal left fibula and adjacent talus which he believed went "along with the inflammatory changes." He found insufficient findings to make a diagnosis of RSD.

On October 30, 1995 a field nurse advised OWCP that the claimant had gone for a bone scan "which showed a fracture of some sort" and was waiting on the report.

In a Form CA-20 dated March 5, 1996, Dr. Amis diagnosed RSD after a left ankle injury. He referred appellant to Dr. Pagani for treatment.

In a February 29, 1996 report, Dr. Pagani reviewed appellant's history of injury and diagnosed post-traumatic pain syndrome of the left foot with features of RSD. He continued to submit reports regarding his treatment of appellant for RSD of the lower limb from 1996 and continuing. On July 18, 1998 Dr. Pagani advised that he had reviewed the bone scan and found "increased uptake around the bones of the left ankle joint." He also reviewed an MRI scan showing an abnormality at the same location and noted that there "has been a contusion or bone bruising described."

On July 25, 2001 Dr. Daniel A. Franklin, a Board-certified internist, evaluated appellant for left foot pain after an injury on June 8, 1995. He diagnosed left foot pain and RSD. Dr. Franklin noted that x-rays of the left foot revealed no acute lesion, but there appeared a "possible old avulsion off the cuboid or perhaps the sesamoid bone in that area."[6]

[6] An x-ray dated July 25, 2001 showed no fractures in the left foot.

In an unsigned report dated June 3, 2005, Dr. Haim Cohen, a podiatrist, advised that x-rays of the left foot and ankle showed no signs of fracture, dislocation, diastasis, or osteochondral lesions.

A June 14, 2007 MRI scan of the left ankle revealed a small focus of signal abnormality within the anterior margin of the medial ankle mortis possibly representing an osteochondral defect or subchondral cyst and mild nonspecific soft tissue edema medially.

A bone scan of the left ankle dated August 14, 2007 showed no evidence of RSD or other significant skeletal disease.

On July 8, 2008 appellant requested that OWCP expand the acceptance of her claim to include a fractured ankle.

In an August 27, 2008 response, OWCP requested that appellant submit a rationalized medical report explaining how any additional diagnoses were causally related to her June 8, 1995 employment injury.

In a report dated April 23, 2021, Dr. Samuel W. Samuel, a Board-certified anesthesiologist, noted that he had not received any x-rays "except for an old fracture of the left foot." He diagnosed complex regional pain syndrome (CRPS) of the left lower extremity due to "an old-work-related injury since 1995."

On May 18, 2022 OWCP requested that a district medical adviser (DMA) address whether the evidence of record supported the diagnosis of a fracture of the left ankle or foot. It further requested that the DMA review and comment on the October 25, 1995 bone scan, the July 18, 1996 report of Dr. Pagani, and the July 25, 2001 finding by Dr. Franklin interpreting a left foot x-ray.

On May 19, 2022 Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a DMA, reviewed the evidence of record, including the results of bone scans and x-rays. He diagnosed a left ankle sprain and CRPS of the left lower extremity. Dr. Harris noted that x-rays of the left foot dated July 3, 2005 showed mild nonspecific abnormalities. The DMA further indicated that Dr. Pagani, on July 18, 1996, had found that a bone scan of unknown date showed increased uptake at the left ankle and that an MRI scan showed abnormalities at the same area, which Dr. Pagani had found consistent with a bone contusion. Dr. Harris noted that on July 25, 2001[7] Dr. Franklin related that an x-ray of the left foot of unknown date showed a possible cuboid/sesamoid avulsion fracture. He found that diagnostic studies, including the October 25, 1995 bone scan, and left foot and ankle x-rays dated June 18 and July 30, 1995 showed no "objective evidence of a fractures in the left foot or ankle." Dr. Harris opined that the diagnosis of a left foot or ankle fracture had not been established.

[7] Dr. Harris indicated that the date of Dr. Franklin's report was July 25, 2021; however, this appears to be a typographical error.

By decision dated June 16, 2022, OWCP denied appellant's request to expand the acceptance of her claim to include a left ankle fracture as causally related to her accepted June 8, 1995 employment injury.

In an unsigned report dated October 29, 2021, received by OWCP on July 5, 2022, Dr. Hungchih Lee, who specializes in pain management, noted that appellant had a history of an ankle or foot fracture after a hook on a forklift struck her on June 8, 1995. He diagnosed a left foot/ankle contusion, left ankle sprain, RSD of the left lower limb, and psychogenic pain.

On July 5, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In an October 6, 2022 Form CA-20, Dr. Lee diagnosed RSD and checked a box marked "Yes" indicating that the condition was caused or aggravated by the described employment activity of a forklift fracturing appellant's left ankle and foot.

An oral hearing was held on November 18, 2022.

Appellant resubmitted an August 24, 1995 report from Dr. Rozen, who noted bruising of the left talus/calcaneus and provided work restrictions. She also submitted medical literature regarding the talus.

By decision dated February 27, 2023, OWCP's hearing representative affirmed the June 16, 2022 decision.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[8]

To establish causal relationship between a condition and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[9] The opinion of the physician must be one of reasonable certainty, and must explain the nature of the relationship between the diagnosed condition and the accepted employment injury.[10]

[8] *N.U.*, Docket No. 22-1329 (issued April 18, 2023); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

[9] *B.W.*, Docket No. 21-0536 (issued March 6, 2023); *D.E.*, Docket No. 20-0936 (issued June 24, 2021); *S.L.*, Docket No. 19-0603 (issued January 28, 2020).

[10] *Id*.

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include a left ankle fracture as causally related to the accepted June 8, 1995 employment injury.

Appellant submitted reports from Dr. Rozen, Dr. Bell, Dr. Lee, Dr. Amis, and Dr. Pagani; however, none of these physicians diagnosed a left ankle fracture. The Board has held that an opinion that fails to provide an opinion on causal relationship is of no probative value.[11] This evidence is, therefore, insufficient to establish expansion of the claim.

On April 23, 2021 Dr. Samuel indicated that he had not received x-rays except for an old fracture of the left foot. He diagnosed left lower extremity CRPS due to a 1995 employment injury. Dr. Samuel did not address the cause of the left foot fracture or attribute it to appellant's employment injury. 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.[12] Therefore, Dr. Samuel's report is insufficient to establish expansion of the claim.

In a report dated July 25, 2001, Dr. Franklin noted that appellant had experienced left foot pain following an injury on June 8, 1995. He diagnosed left foot pain and RSD. Dr. Franklin noted that x-rays of the left foot revealed no acute lesion, but a possible old avulsion off the cuboid or sesamoid bone. His finding of a possible avulsion off the cuboid or sesamoid bone, however, is speculative in nature and thus of diminished probative value.[13] Further, Dr. Franklin did not offer an opinion regarding the cause of appellant's condition.[14] As such, this evidence is of no probative value and is insufficient to establish expansion of the claim.

In an October 6, 2022 Form CA-20, Dr. Lee diagnosed RSD and checked a box marked "Yes" indicating that the condition was caused or aggravated by the described employment activity of a forklift fracturing appellant's left ankle and foot. While the form provided a history of a foot fracture, he failed to provide an independent assessment of the condition or relate a fracture to the accepted employment injury; consequently, his opinion is insufficient to meet appellant's burden of proof.[15]

[11] *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).

[12] *Id.*; *see also S.J.*, Docket No. 20-0310 (issued April 21, 2021).

[13] *See C.T.*, Docket No. 22-0013 (issued November 22, 2022); *P.D.*, Docket No. 18-1461 (issued July 2, 2019); *E.B.*, Docket No. 18-1060 (issued November 1, 2018); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).

[14] *Id*.

[15] *Id*.

Appellant submitted an unsigned report from a podiatrist and an unsigned October 29, 2021 report from Dr. Lee. The Board has held, a report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence.[16]

Appellant submitted the results of diagnostic testing, including x-rays, MRI scans, and bone scans; however, the Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether employment caused any of the diagnosed conditions.[17] Thus, this evidence is also insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish causal relationship between the accepted June 8, 1995 employment injury and the claimed left ankle fracture, 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include a left ankle fracture as causally related to the accepted June 8, 1995 employment injury.

[16] *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *A.P.*, Docket No. 18-0238 (issued July 20, 2018).

[17] *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *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 27, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 18, 2024
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