

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

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**K.R., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Louisville, KY, Employer**

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**Docket No. 23-1164  
Issued: March 27, 2024**

*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:

ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On September 13, 2023 appellant, through counsel, filed a timely appeal from an August 28, 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 diagnosed medical condition in connection with the accepted January 5, 2022 employment incident.

## **FACTUAL HISTORY**

On January 5, 2022 appellant, then a 29-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 5, 2022 she sustained a left foot injury when she stepped off the curb, and rolled her foot causing a pop and sharp pain while in the performance of duty. She did not stop work.<sup>3</sup>

In a March 16, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence.

In an attending physician's report (Form CA-20) dated April 5, 2022, Dr. Charles Kaelin Jr., a Board-certified orthopedic surgeon, noted October 2021 and June 2022 injuries finding possible stress fractures.

By decision dated May 9, 2022, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish causal relationship between her diagnosed medical conditions and the accepted January 5, 2022 employment incident. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

On May 16, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on September 2, 2022.

By decision dated October 24, 2022, OWCP's hearing representative affirmed the May 9, 2022 decision, as modified, finding that the evidence of record was insufficient to establish a medical condition in connection with the accepted January 5, 2022 employment incident.

On August 14, 2023 appellant, through counsel, requested reconsideration and noted submission of Dr. Kaelin's March 28, 2022 medical report in support of her claim.

In a March 28, 2022 medical report, Dr. Kaelin evaluated appellant for her October 5, 2021 injury under OWCP File No. xxxxxx844 when she was walking on a sidewalk and her left foot turned over a curb while in the performance of duty. He reported that appellant had been diagnosed with stress fractures and subsequently released to work without restrictions. Dr. Kaelin noted that appellant retwisted her foot in January 2022 while delivering mail. He discussed a January 6, 2022

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<sup>3</sup> Appellant had previously filed a Form CA-1 for a traumatic injury sustained on October 5, 2021, which OWCP accepted for a left foot stress fracture. OWCP assigned the claim OWCP File No. xxxxxx844. She also previously filed a Form CA-1 for a traumatic injury sustained on December 21, 2021, where she alleged an aggravation of the prior October 5, 2021 left foot fracture under OWCP File No. xxxxxx844. OWCP assigned the claim OWCP File No. xxxxxx708. On November 14, 2022 OWCP combined OWCP File Nos. xxxxxx708, xxxxxx844, and xxxxx962, designating the latter as the master file.

magnetic resonance imaging (MRI) scan of the left foot, which revealed inflammation in the area but no fractures. Dr. Kaelin diagnosed left foot pain and paresthesia and provided restrictions.

In a November 18, 2022 report, William Elkins, a physician assistant, related appellant's history of injury, examined appellant, and diagnosed pain in left foot, and paresthesia of the left lower limb.

By decision dated August 28, 2023, OWCP denied modification of the October 24, 2022 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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,<sup>5</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>6</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>7</sup>

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>8</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>9</sup> 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

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<sup>4</sup> *Id.*

<sup>5</sup> *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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).

<sup>6</sup> *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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).

<sup>7</sup> *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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).

<sup>8</sup> *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *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).

nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted January 5, 2022 employment incident.

Appellant submitted Dr. Kaelin's March 28, 2022 medical report in support of her claim. He diagnosed left foot pain and paresthesia. However, the Board has held that pain is a description of a symptom, not a diagnosis of a medical condition.<sup>11</sup> Therefore, this evidence is insufficient to meet appellant's burden of proof.<sup>12</sup>

Appellant also submitted an April 5, 2022 Form CA-20 in which Dr. Kaelin noted October 2021 and June 2022 injuries finding possible stress fractures. As such, his reports were speculative and equivocal.<sup>13</sup>

Appellant submitted a report from a physician assistant. However, certain healthcare providers such as physician assistants<sup>14</sup> are not considered "physician[s]" as defined under FECA. Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>15</sup>

As appellant has not submitted rationalized medical evidence to establish a diagnosed medical condition in connection with the accepted January 5, 2022 employment incident, the Board finds that she has not met her burden of proof.

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<sup>10</sup> *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>11</sup> *See K.S.*, Docket No. 19-1433 (issued April 26, 2021); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

<sup>12</sup> *See J.P.*, Docket No. 18-0349 (issued December 30, 2019); *D.D.*, 57 ECAB 734 (2006).

<sup>13</sup> *See B.B.*, Docket No. 21-0284 (issued October 5, 2022); *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>14</sup> Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

<sup>15</sup> *Id.*

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 diagnosed medical condition in connection with the accepted January 5, 2022 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 28, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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