United States Department of Labor
Employees' Compensation Appeals Board

D.F., Appellant	)	
and	)	**Docket No. 25-0528**
	)	**Issued: June 9, 2025**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Memphis, TN, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 May 8, 2025, appellant, through counsel, filed a timely appeal from an April 10, 2025 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 expand the acceptance of her claim to include left leg posterior tibial tendinitis as causally related to, or consequential to, the accepted August 16, 2018 employment injury.

FACTUAL HISTORY

On August 21, 2018, appellant, then a 63-year-old customer service representative, filed a traumatic injury claim (Form CA-1) alleging that on August 16, 2018 she injured her left ankle when she stepped in a hole and fell on both ankles while in the performance of duty. Appellant stopped work on the date of injury and returned to work on August 17, 2018. OWCP accepted the claim for left ankle sprain.

In an after-visit summary dated August 17, 2018, Dr. Rachel R. Richardson, a Board-certified internist, diagnosed sprain of anterior talofibular ligament (ATFL) of the left ankle, acute right ankle pain, and acute left ankle pain.

In reports dated September 5 and October 3, 2018, Lisa Warren, a nurse practitioner, noted that appellant related complaints of pain and swelling in the left ankle, which she attributed to stepping into a hole on August 16, 2018. She performed physical examinations and observed left ankle pain, swelling, throbbing in the toes, and numbness. Ms. Warren diagnosed left ankle pain, sprain, and localized edema.

An x-ray of the left ankle dated September 7, 2018 revealed no acute findings.

In an October 25, 2018 work status note, Ms. Warren released appellant to return to full-duty work and diagnosed left ankle pain, subtalar synovitis, and neuritis.

In a medical report dated October 25, 2018, Dr. Susan N. Ishikawa, a Board-certified orthopedic surgeon, noted that appellant related complaints of burning pain, pain that woke her up at night, and a limp, which she attributed to the August 16, 2018 employment injury. She performed a physical examination and observed painless range of motion (ROM), global tenderness, hypersensitivity to light touch, diffusely decreased sensation, and an antalgic gait. Dr. Ishikawa obtained x-rays, which were normal. She diagnosed left ankle sprain, global foot and ankle pain, and neuritic pain.

In a medical report dated December 5, 2018, Dr. Ben J. Grear, a Board-certified orthopedic surgeon, noted the history of the August 16, 2018 employment injury and appellant's symptoms. He performed a physical examination of the left foot and ankle and observed medial and lateral swelling, tenderness to palpation, and tightness in the gastrocnemius complex. Dr. Grear diagnosed ankle sprain and recommended a magnetic resonance imaging (MRI) scan of the left ankle.

An MRI scan of the left ankle dated December 26, 2018 was normal. In a December 28, 2018 follow-up report, Dr. Grear reviewed the MRI scan and diagnosed left ankle sprain.

In a work status note of even date, Christina Parker, a healthcare provider,[3] released appellant to sedentary duty with use of a boot and diagnosed left occult ankle fracture and osteochondritis dissecans (OCD) lesion.

In a February 23, 2019 follow-up report, Dr. Grear documented examination findings of subtle antalgic gait of the left lower extremity, mild swelling around the lateral ankle, and mild tenderness to palpation of the ATFL. He recommended that appellant complete physical therapy and released her to return to work without restrictions.

OWCP also received physical therapy reports.

In an August 10, 2022 letter, Dr. Grear indicated that appellant had reached maximum medical improvement (MMI) as of February 13, 2019.

In a March 30, 2023 permanent impairment rating evaluation report, Dr. James Brien, a Board-certified anesthesiologist, diagnosed sprain of unspecified ligament of left ankle.

In a medical report dated March 15, 2024, Dr. Nathan Coleman, a podiatrist, noted that appellant complained of worsening instability and burning pain in her ankles for several years. He performed a physical examination and observed tenderness to palpation of the lateral right and left ATFLs. Dr. Coleman diagnosed bilateral ankle instability and recommended arthroscopic surgery.

In a medical report and work note, both dated April 9, 2024, Dr. Tim Sweo, an orthopedic surgeon, noted the August 16, 2018 employment injury and obtained x-rays, which were grossly normal. He diagnosed left ankle pain.

In a follow-up report and work note, both dated May 7, 2024, Dr. Sweo performed a physical examination and observed left posterior tibialis tendinitis, mild medial swelling, and moderate tenderness. He diagnosed left leg posterior tibial tendinitis and recommended physical therapy.

On May 21, 2024, appellant, through counsel, requested expansion of the acceptance of her claim to include left leg posterior tibial tendinitis.

In a July 18, 2024 medical report, Dr. Sweo related appellant's complaints of left ankle pain and decreased mobility. He documented physical examination findings and diagnosed left leg posterior tibial tendinitis.

In a September 3, 2024 follow-up report, Dr. Sweo diagnosed left ankle pain and noted that conservative treatment for posterior tibial tendinitis had been ineffective. He opined that her symptoms may be neurological in nature and recommended electromyography and a nerve conduction velocity (EMG/NCV) study of the left leg.

[3] The Board is unable to determine Ms. Parker's credentials.

In a development letter dated October 3, 2024, OWCP informed appellant of the deficiencies of her expansion claim. It advised her of the type of factual and medical evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence.

In an October 21, 2024 statement, appellant indicated that she did not receive treatment to her left ankle between February 2019 and February 2024 because she was undergoing treatment for other work-related injuries to her shoulders and left thumb.

In an October 22, 2024 follow-up report, Dr. Sweo noted that appellant's physical examination was suggestive of an L4 radiculopathy. He diagnosed left leg posterior tibial tendinitis.

By decision dated November 12, 2024, OWCP denied expansion of the acceptance of appellant's claim to include left leg posterior tibial tendinitis as causally related to, or consequential to, the accepted August 16, 2018 employment injury.

On November 19, 2024, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on March 5, 2025.

On January 29, 2025, OWCP received an EMG/NCV study dated September 20, 2024, which was read as a normal study of the left lower limb and paraspinals with no tibial or fibular neuropathy, no peripheral neuropathy, and no lumbosacral neuropathy.

By decision dated April 10, 2025, OWCP's hearing representative affirmed the November 19, 2024 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.[4] When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct.[5] Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[6]

To establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence.[7] The opinion of the physician must be based on a complete factual and medical

[4] *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

[5] *See J.M.*, Docket No. 19-1926 (issued March 19, 2021); *I.S.*, Docket No. 19-1461 (issued April 30, 2020); *see also Charles W. Downey*, 54 ECAB 421 (2003).

[6] *J.M.*, *id.*; *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

[7] *See V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

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.[8]

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.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include left leg posterior tibial tendinitis as causally related to, or consequential to, her accepted August 16, 2018 employment injury.

In support of her expansion claim, appellant submitted reports dated May 7, July 18, and October 22, 2024 by Dr. Sweo, who diagnosed left leg posterior tibial tendinitis. He did not, however, offer an opinion regarding the cause of that condition. Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[10] This evidence is, therefore, insufficient to establish appellant's expansion claim.

In an August 17, 2018 report by Dr. Richardson, in an October 25, 2018 report by Dr. Ishikawa, and in April 9 and September 3, 2024 reports by Dr. Sweo, appellant was diagnosed with ankle pain. In a February 15, 2024 report, Dr. Coleman diagnosed bilateral ankle instability. These are descriptions of a symptom, not clear diagnoses of a medical condition.[11] As such, these reports are insufficient to meet appellant's burden of proof.

In reports dated December 5, 2018 through August 10, 2022, and March 30, 2023, Drs. Grear and Brien, respectively, diagnosed a left ankle sprain. However, these reports are of no probative value regarding appellant's claim for expansion of the accepted conditions as neither physician provided an opinion that she had additional medical conditions causally related to the August 16, 2018 employment injury. The Board has held that a medical report that does not offer an opinion on causal relationship is of no probative value.[12] Thus, this evidence is insufficient to establish expansion of the acceptance of appellant's claim.

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[8] *E.P.*, Docket No. 20-0272 (issued December 19, 2022); *I.J.*, 59 ECAB 408 (2008).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); *M.B.*, Docket No. 20-1275 (issued January 29, 2021); *see R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[10] *A.P.*, Docket No. 18-1690 (issued December 12, 2019); *J.H.*, Docket No. 19-0383 (issued October 1, 2019); *L.B.,* Docket No. 18-0533 (issued August 27, 2018); *D.K.,* Docket No. 17-1549 (issued July 6, 2018).

[11] *D.R.*, Docket No. 18-1408 (issued March 1, 2019); *D.A.*, Docket No. 18-0783 (issued November 8, 2018).

[12] *L.B.*, *supra* note 10; *D.K.*, *supra* note 10.

Appellant also submitted notes by Ms. Warren, a nurse practitioner, and physical therapy reports. The Board has held that certain healthcare providers such as nurses, physician assistants, and physical therapists are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion. Therefore, this evidence is of no probative value and is insufficient to establish appellant's expansion claim.[13]

OWCP also received a December 28, 2018 note signed by Ms. Parker, an unidentifiable healthcare provider. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[14]

The remaining evidence of record consisted of reports regarding the results of diagnostic studies. The Board, however, has held that reports of diagnostic tests, standing alone, lack probative value as they do not provide an opinion as to whether the accepted employment factors caused the diagnosed condition.[15] Thus, this evidence is insufficient to establish appellant's expansion claim.

As the medical evidence of record is insufficient to establish expansion of the acceptance of the claim to include left leg posterior tibial tendinitis as causally related to, or consequential to, appellant's accepted August 16, 2018 employment injury, the Board finds that she 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 expand the acceptance of her claim to include left leg posterior tibial tendinitis as causally related to, or consequential to, her accepted August 16, 2018 employment injury.

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[13] Section 8101(2) of FECA provides that 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. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *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 B.D.,* Docket No. 22-0503 (issued September 27, 2022) (nurse practitioners are not considered physicians as defined under FECA and their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits); *L.S.,* Docket No. 19-1231 (issued March 30, 2021) (a nurse practitioner is not considered a physician as defined under FECA); *V.R.,* Docket No. 19-0758 (issued March 16, 2021) (a physical therapist is not considered a physician under FECA); *C.K.,* Docket No. 19-1549 (issued June 30, 2020) (physical therapists are not considered physicians as defined under FECA).

[14] *See E.S.*, Docket No. 16-0267 (issued May 17, 2016); *Thomas L. Agee,* 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills,* 39 ECAB 572, 575 (1988).

[15] *See W.T.*, Docket No. 23-0323 (issued August 15, 2023); *V.Y.*, Docket No. 18-0610 (issued March 6, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 2025
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