

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

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R.R., Appellant )

and )

U.S. POSTAL SERVICE, INDUSTRIAL WEST )  
SACRAMENTO POST OFFICE, )  
West Sacramento, CA, Employer )

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**Docket No. 25-0768**  
**Issued: September 15, 2025**

*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  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 7, 2025 appellant, through counsel, filed a timely appeal from a July 11, 2025 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.<sup>3</sup>

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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 an 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.*

<sup>3</sup> The Board notes that, following the July 11, 2025 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.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include a right Achilles condition, bilateral congenital rear foot deformity with pes planus, and/or avascular necrosis (AVN) of the right hip as causally related to, or consequential to, the accepted July 11, 2022 employment injury.

## **FACTUAL HISTORY**

On October 12, 2022 appellant, then a 28-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed problems with his feet, right knee, and back, due to factors of his federal employment. He noted that his job duties involved excessive amounts of walking, including up and down steep inclines. Appellant noted that he first became aware of his conditions on July 11, 2022, and realized their relationship to factors of his federal employment on August 9, 2022. He stopped work on October 13, 2022.

In a medical report dated September 28, 2022, Dr. Shayan Essapoor, a podiatrist, noted that appellant related a recent onset of occasional tingling in the second and third metatarsophalangeal joints of the right foot and generalized metatarsalgia of the left foot, which he attributed to prolonged ambulation at work, including on inclined and declined surfaces. He diagnosed metatarsalgia of the left foot, left foot pain, bilateral congenital rear foot deformity with pes planus, tight gastrocnemius, right foot pain, right plantar fasciitis, and Achilles tendinitis of the right lower extremity.

In a development letter dated October 19, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

X-rays of the right knee and hip dated October 20, 2022 were normal.

In form reports dated October 20 and November 30, 2022, Dr. John Changhwan Kim, a Board-certified occupational medicine specialist, noted that appellant related complaints of right knee pain and chronic bilateral foot pain for several months, which he attributed to his work duties of walking 10 to 20 miles per day, climbing steep driveways, and entering and exiting his mail truck throughout the day. On physical examination of the right lower extremity, he observed tenderness in the hamstring, iliotibial band, patella, and calf, and tenderness with flexion against resistance and strength testing. Dr. Kim diagnosed a right leg strain due to excessive walking.

By decision dated May 4, 2023, OWCP accepted the claim for right leg strain.

In a separate letter also dated May 4, 2023, OWCP advised appellant that the evidence of record remained insufficient to establish additional conditions of right plantar fasciitis, right Achilles tendinitis, or bilateral congenital rearfoot valgus with pes planus. It advised him of the type of factual and medical evidence needed for his expansion claim and afforded him 30 days to submit the necessary evidence.

OWCP thereafter received a July 15, 2022 note by Dr. Essapoor, who diagnosed severe right plantar fasciitis and insertional Achilles tendinitis. Dr. Essapoor held appellant off work from July 15 to August 6, 2022.

In an April 3, 2023 medical report, Dr. Essapoor reviewed a March 31, 2023 magnetic resonance imaging (MRI) scan of the right foot and documented his physical examination findings. He diagnosed right foot pain and osteochondrosis of the head of the second metatarsal cone, also known as Freiberg's disease.

In May 18 and June 22, 2023 medical reports, Dr. Kim noted that appellant had not worked for the employing establishment since October 12, 2022 and that he had begun working in a sedentary position at automotive store. He indicated that he related continued posterior leg/hamstring pain with heavy lifting and while walking up and down inclines. Dr. Kim diagnosed right knee joint sprain and right hip, thigh, knee, and lower leg pain. He recommended an MRI scan of the right hip.

On June 27, 2023 OWCP referred appellant, the medical record, and a statement of accepted facts (SOAF) to Dr. John H. Welborn, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the nature and extent of appellant's July 11, 2022 employment injury.

A July 5, 2023 MRI scan of the right hip revealed AVN at the femoral head with possible subchondral collapse.

In medical reports dated July 20 and August 21, 2023, Dr. Kim reviewed the right hip MRI scan and documented appellant's subjective complaints and physical examination findings. He diagnosed right leg and hip pain, and aseptic necrosis of right hip.

In a report dated August 21, 2023, Dr. Welborn reviewed the medical record and SOAF and noted that appellant related complaints of bilateral plantar, right groin, and right hip pain, which he attributed to his employment duties. He documented physical examination findings and diagnosed a resolved lower right leg strain and AVN of the right femoral head. Dr. Welborn opined that the right hip AVN was not caused by appellant's employment duties.

By decision dated December 1, 2023, OWCP denied appellant's expansion claim, finding that the medical evidence of record did not establish an employment relationship. It reiterated that the only accepted condition was right leg strain.

On December 12, 2023 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, on January 19, 2024 OWCP's hearing representative vacated the December 1, 2023 decision and remanded the case to OWCP for further development.

On January 25, 2024 OWCP provided an updated SOAF, which included a description of the accepted employment factors, to Dr. Welborn for his review and comment.

In a supplemental report dated February 14, 2024, Dr. Welborn reviewed the updated SOAF and diagnosed congenital rear foot valgus with pes planus and AVN of the right hip and second metatarsal head of the right foot, which he opined were unrelated to appellant's employment duties.

By decision dated March 14, 2024, OWCP denied appellant's expansion claim.

On March 21, 2024 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review with respect to the March 14, 2024 decision.

A hearing was conducted on June 3, 2024 at which time appellant testified that he did not have any problems with his feet, ankles, legs, or hips as a child or into adulthood.

OWCP thereafter received an MRI scan of the right foot dated March 31, 2023, which revealed subchondral flattening with underlying cystic change and sclerosis of the second metatarsal head most consistent with Freiberg's disease and minimal underlying subchondral marrow edema consistent with a chronic lesion.

By decision dated July 9, 2024, an OWCP hearing representative vacated the March 14, 2024 decision, noting that Dr. Welborn's opinion was insufficient to constitute the weight of the evidence. The hearing representative remanded the case to OWCP to obtain a new second opinion evaluation by a physician in an appropriate field of medicine regarding appellant's expansion claim, including an explanation with rationale as to whether the accepted employment factors in any way contributed to the development, acceleration, or aggravation of the diagnosed conditions of right plantar fasciitis, Achilles tendinitis, bilateral congenital rearfoot valgus with pes planus, right hip AVN, or right foot Freiberg's disease.

On July 23, 2024 OWCP referred appellant, the case record, a SOAF, and series of questions to Dr. Charles F. Xeller, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In an October 1, 2024 report, Dr. Xeller reviewed the medical record and SOAF and noted appellant's history of pain in his feet and back, which he attributed to his work duties for the employing establishment between June 12, 2021 and October 2022. He performed a physical examination and observed that he walked with a slight antalgic gait favoring the left leg and complained of pain in the groin and metatarsal heads while standing on the right leg. Dr. Xeller also observed bilateral pes planus, reduced dorsiflexion bilaterally due to tight calves, pain over the right second and third metatarsal heads, slight pain over the right anterior medial calcaneus, full range of motion (ROM) in the ankles and knees with no pain, painful rotation with Faber's test on the right, and reduced ROM of the spine with mild pain to palpation over the right sacroiliac joint. He diagnosed a permanent aggravation of Freiberg's osteochondrosis of the right foot and right foot plantar fasciitis, which he opined were caused by impact loading while carrying mail for 10 miles per day. Dr. Xeller also diagnosed a right Achilles condition and bilateral congenital rear foot deformity with pes planus, which he opined in all medical probability were not work related but part of his general make up. He further diagnosed right hip AVN which he opined was an acquired condition but not related to his work.

By decision dated November 18, 2024, OWCP expanded its acceptance of appellant's claim to include right foot plantar fasciitis and permanent aggravation of Freiberg's osteochondrosis of the left foot.<sup>4</sup>

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<sup>4</sup> The Board notes that the evidence of record reflected a diagnosis of permanent aggravation of Freiberg's osteochondrosis of the right foot, not the left foot.

By *de novo* decision dated December 20, 2024, OWCP denied expansion of the acceptance of appellant's claim to include an Achilles condition, rear-foot valgus deformity with bilateral pes planus, or right hip AVN as causally related to, or consequential to, the accepted July 11, 2022 employment injury.

On January 2, 2025 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was conducted on April 4, 2025.

By decision dated July 11, 2025, OWCP's hearing representative affirmed the December 20, 2024 decision, finding that Dr. Xeller's October 1, 2024 report constituted the weight of the medical opinion evidence.

### **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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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.<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>

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.<sup>10</sup>

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<sup>5</sup> *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>6</sup> *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).

<sup>7</sup> *J.M., id.*; *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

<sup>8</sup> *See V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>9</sup> *E.P.*, Docket No. 20-0272 (issued December 19, 2022); *I.J.*, 59 ECAB 408 (2008).

<sup>10</sup> 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).

## ANALYSIS

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

On July 18, 2024 OWCP referred appellant, the case record, a SOAF, and a series of questions, to Dr. Xeller for a second opinion evaluation. It requested that he provide a well-rationalized medical opinion as to direct causation, aggravation, acceleration, or precipitation due to the accepted employment factors.

In his October 1, 2024 second opinion evaluation report, Dr. Xeller reviewed the medical record and SOAF, noted appellant's complaints, and documented physical examination findings. He diagnosed a permanent aggravation of Freiberg's osteochondrosis of the right foot and right foot plantar fasciitis, which he opined were caused by impact loading while carrying mail for 10 miles per day. Dr. Xeller also diagnosed a right Achilles condition and bilateral congenital rear foot deformity with pes planus, which he opined in all medical probability were not work related but part of his general make up. He further diagnosed right hip AVN which he opined was an acquired condition but not related to his work. However, Dr. Xeller did not provide sufficient rationale for his opinion. The Board has held that a conclusory opinion provided by a physician, without the necessary rationale, is insufficient to resolve the issue.<sup>11</sup>

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation, but OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>12</sup> Once OWCP undertook development of the evidence by referring appellant's case for a second opinion evaluation, it was required to obtain a proper evaluation and report regarding the issue in this case.<sup>13</sup>

The case must therefore be remanded for further development. On remand, OWCP shall obtain a supplemental opinion, with rationale, from Dr. Xeller regarding whether appellant's right Achilles condition, bilateral congenital rear foot deformity with pes planus, and/or right hip AVN are causally related to the accepted employment injury.<sup>14</sup> If he is unavailable or unwilling to provide a supplemental opinion, OWCP shall refer appellant to a new second opinion physician.<sup>15</sup> After this and other such further development as deemed necessary, it shall issue a *de novo* decision.

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<sup>11</sup> See *C.P.*, Docket No. 21-1120 (issued January 27, 2023); *C.W.*, Docket No. 20-1339 (issued September 15, 2021); *J.A.*, Docket No. 20-1258 (issued August 4, 2021); *G.Y.*, Docket No. 19-1683 (issued March 16, 2021); *A.C.*, Docket No. 19-1522 (issued July 27, 2020); *J.O.*, Docket No. 19-0326 (issued July 16, 2019); *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

<sup>12</sup> *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *S.S.*, Docket No. 18-0397 (issued January 15, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>13</sup> See *S.S.*, Docket No. 24-0147 (issued July 2, 2024); *Richard F. Williams*, 55 ECAB 343, 346 (2004).

<sup>14</sup> See *I.S.*, Docket No. 25-0093 (issued March 14, 2025); *P.J.*, Docket No. 23-1168 (issued February 6, 2024).

<sup>15</sup> *J.F.*, Docket No. 23-0963 (issued December 8, 2023); *S.G.*, Docket No. 22-0014 (issued November 3, 2022); see also *D.L.*, Docket No. 20-0886 (issued November 9, 2021).

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 11, 2025 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 15, 2025  
Washington, DC

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

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

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