

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

K.G., Appellant)	
and)	Docket No. 25-0792
U.S. POSTAL SERVICE, POST OFFICE, Kansas City, KS, Employer)	Issued: September 26, 2025
)	

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 21, 2025 appellant filed a timely appeal from a May 28, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the May 28, 2025 decision, OWCP received additional evidence. 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 establish that the acceptance of his claim should be expanded to include left ankle instability as causally related to, or as a consequence of, his accepted June 27, 2024 employment injury.

FACTUAL HISTORY

On June 28, 2024 appellant, then a 49-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on June 27, 2024, he sustained a fracture or sprain of the right foot near his toes when he stepped into a narrow indentation in the ground while in the performance of duty. He stopped work on June 28, 2024.

In reports dated July 8 through August 19, 2024, Dr. Melissa M. Journot, a podiatrist, diagnosed a closed fracture of the third metatarsal base of the right foot. She prescribed a controlled ankle motion (CAM) boot.

An August 30, 2024 computerized tomography (CT) scan of the right foot revealed a nondisplaced intra-articular fracture of the base of the third metatarsal, without focal tendon abnormality or soft tissue abnormality.

In a September 6, 2024 report, Dr. Journot related that appellant ambulated using a CAM boot. She noted that appellant had “pain to the left foot due to being in the CAM boot with muscle strain to the abductor hallucis muscle belly as well as sinus tarsal syndrome to the left due to being in the boot and all his weight going on the left foot.”

By decision dated September 6, 2024, OWCP accepted the claim for fracture of unspecified metatarsal bones, right foot, initial encounter for closed fracture. It paid appellant wage-loss compensation on the supplemental rolls commencing August 24, 2024.

In a September 20, 2024 report, Dr. Journot opined that appellant’s right third metatarsal fracture was healing well, with good callus formation. She diagnosed left plantar fasciitis, post right foot fracture boot.

In a November 18, 2024 report, Dr. Journot related that appellant had continuing issues with his left foot which were addressed in physical therapy. On examination, she observed severe laxity of the left ankle, related to plantar fasciitis and “worsened when he was in the boot for his right foot” due to the metatarsal fracture. Dr. Journot diagnosed sprain of lateral ligament of left ankle.

In a December 2, 2024 report, Dr. Journot noted “a very loose ankle concerning for loss of multiple ankle ligaments leading to chronic issues with walking[.]” She opined that the left ankle laxity was “directly related to his original work-related injury” as it was caused by walking on the left foot more than the right foot, and multiple left ankle sprains when wearing the CAM boot on the right foot. Dr. Journot requested that OWCP expand its acceptance of appellant’s claim to include the conditions of chronic left ankle instability.

In a December 9, 2024 report, Dr. Journot opined that appellant's right metatarsal fracture had healed but that appellant required additional medical treatment for left ankle instability.

In a December 31, 2024 statement, appellant requested that OWCP expand its acceptance of his claim to include the conditions of soft tissue injury of the left ankle. He recounted that his left ankle symptoms started after he began wearing the CAM boot on his right foot.

In reports dated January 3, 2025, Dr. Journot indicated that appellant's left ankle remained "very weak and painful from his injury to the right foot being in a boot caused the left ankle and foot to be painful." An ankle brace was no longer effective and a magnetic resonance imaging (MRI) scan demonstrated that his ligaments were impaired. Appellant experienced "worsening pain and issues since he injured the right foot and had to put more pressure on the left foot and ankle leading to the worsening pain along the left." Dr. Journot recommended an arthroscopic reconstruction of the left ankle ligament. She returned appellant to work for four hours a day with restrictions effective January 6, 2025.

Appellant returned to modified work on January 7, 2025.

On January 29, 2025 OWCP referred appellant's case, along with the medical record, a statement of accepted fact (SOAF), and a series of questions to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), to determine whether he developed left ankle instability as a consequence of the accepted work-related injury.

In a January 31, 2025 report, Dr. Journot opined that appellant's chronic instability of the left ankle was due to the accepted right foot injury as he "had to put all of his weight on the left" which led "to a left ankle injury and not instability of the ankle joint." She found that appellant required a left ankle arthroscopy and lateral ligament reconstruction.

In a February 3, 2025 report, Dr. Harris, the DMA, noted his review of the SOAF and the medical record, including Dr. Journot's opinion that appellant "developed left ankle instability as a result of altered gait mechanics due to a fracture of the right foot." He opined that there was insufficient medical evidence to warrant expansion of the acceptance of the claim as Dr. Journot's December 2, 2024 report did not document appellant's subjective complaints, objective findings, or diagnostic studies. Dr. Harris maintained that the development of contralateral ankle instability as a result of altered gait mechanics was not consistent with published medical literature.

In a February 24, 2025 report, Dr. Journot noted objective findings of the left foot and ankle of a positive anterior drawer sign, large clunking, crepitus of the left ankle joint which caused severe left ankle pain and debilitation, and an MRI scan which demonstrated an anterior talofibular ligament (ATFL) tear. She opined as appellant had participated in physical therapy for six months with no improvement, that he required left ankle arthroscopy with osteochondral defect repair and lateral ankle ligament reconstruction. Dr. Journot opined that the accepted right metatarsal fracture led to left ankle injury "from compensatory increased weight to the left ankle" with severe pain and instability. She explained that the dynamic forces of walking in the CAM boot caused additional force to the unaffected side. "Compensatory and altered gait has been studied and it does show forces do increase to the non[-]injured side. The mechanics of the body are carefully

balanced and when a joint is forced to endure greater forces and weight, it can lead to deterioration of the bones, ligaments, and tendons.”

OWCP also received a December 5, 2024 MRI scan of the left ankle which demonstrated chronic injury of the anterior talofibular ligament, plantar calcaneal spur with extensive chronic plantar fasciitis, a probable high-grade partial intrasubstance tear/complete discontinuity of the plantar fascia near its origin, extensive ill-defined bone marrow edema involving the mid/distal aspect of the lateral cuneiform with subchondral cyst-like changes consistent with chronic repetitive trauma, tenosynovitis of the extensor digitorum longus tendon at the level of the ankle joint/hindfoot extending to the midfoot without a tendon tear.

On February 25, 2025 OWCP requested that Dr. Harris review Dr. Journot’s December 2, 2024 and February 24, 2025 reports and submit a supplemental report regarding whether appellant had developed left ankle instability as a consequence of the accepted right metatarsal fracture.

In reports dated March 12, 2025, Dr. Journot related that appellant had continued pain in his left ankle and the top of his left foot.

Thereafter, OWCP received a March 6, 2025 supplemental report wherein Dr. Harris reviewed additional medical evidence. He opined that there was no evidence in evidence-based medical literature to support Dr. Journot’s opinion that appellant’s left ankle instability resulted from altered gait mechanics caused by the accepted right metatarsal fracture. Dr. Harris recommended that OWCP authorize the proposed left ankle arthroscopy with lateral ankle ligament reconstruction as “medically necessary and reasonable for treatment of the accepted work condition.”

In a report dated March 24, 2025, Dr. Journot reiterated that appellant sustained left ankle instability caused by increased weightbearing to the accepted right foot injury.

On April 1, 2025 OWCP requested that Dr. Harris review additional medical evidence and provide a supplemental report to clarify if appellant sustained left ankle instability or required surgical treatment of the left ankle causally related to the accepted right metatarsal fracture.

In an April 11, 2025 report, Dr. Harris opined that Dr. Journot had not provided any information that appellant’s left ankle instability was causally related to appellant’s work activities. He reiterated that there was no evidence in evidence-based medical literature that gait alteration caused ankle instability in the contralateral lower extremity. Dr. Harris advised that OWCP should not authorize the proposed left ankle surgery as it was not causally related to the accepted right third metatarsal fracture.

In an April 28, 2025 report, Dr. Journot opined that appellant’s left ankle instability had been caused by being non-weight bearing on the right and then wearing a CAM boot on the right for three months, causing increased weight bearing on the left. She administered a steroid injection to the left ankle.

By decision dated May 28, 2025, OWCP denied expansion of the acceptance of appellant’s claim to include left ankle instability causally related to, or consequential to, the accepted June 27, 2024 employment injury.

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.³ Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁴ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment injury must be based on a complete factual and medical background.⁵ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).⁶

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 a claimant's own intentional misconduct.⁷ 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 consequence of a compensable primary injury.⁸

FECA provides that if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.⁹ For a conflict to arise the opposing physicians' viewpoints must be of virtually equal weight and rationale.¹⁰ Where OWCP has referred the case to an impartial medical examiner (IME) to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well reasoned and based upon a proper factual background, must be given special weight.¹¹

³ See *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁴ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁵ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *Id.*

⁷ See *S.M.*, Docket No. 19-0397 (issued August 7, 2019); *Mary Poller*, 55 ECAB 483, 487 (2004).

⁸ *A.T.*, Docket No. 18-1717 (issued May 10, 2019); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

⁹ 5 U.S.C. § 8123(a); see 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

¹⁰ *H.B.*, Docket No. 19-0926 (issued September 10, 2020); *D.P.*, Docket No. 23-0374 (issued August 19, 2024); *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006); *James P. Roberts*, 31 ECAB 1010 (1980).

¹¹ 20 C.F.R. § 10.321. See also *J.H.*, Docket No. 22-0981 (issued October 30, 2023); *James P. Roberts, id.*; *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

ANALYSIS

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

Dr. Journot, in reports dated September 6, 2024 through April 28, 2025, opined that gait alteration from wearing the right CAM boot and increased weight bearing on the left foot while in non-weightbearing status due to the accepted right third metatarsal fracture caused left ankle instability. In her February 24, 2025 report, Dr. Journot described objective findings of left ankle instability including a positive anterior drawer sign, “clunking,” and crepitus, and noted an MRI scan which revealed a left ATFL ligament tear. She explained that the dynamic forces of walking in the right foot CAM boot placed additional force on the left lower extremity. Dr. Journot noted that studies had demonstrated that compensatory and altered gait increased force to the non-injured side, which lead to deterioration of bones, ligaments, and tendons.

Dr. Harris, the DMA, opined in reports dated February 3, March 6, and April 11, 2025, that Dr. Journot’s opinion that altered gait mechanics caused ankle instability on the contralateral side was not supported by evidence-based medical literature.

The Board thus finds that a conflict exists between Dr. Journot, appellant’s treating physician, and Dr. Harris, the DMA, regarding expansion of the acceptance of appellant’s claim to include a sprain of other ligament of left ankle causally related to the accepted June 27, 2024 employment injury.¹² As noted above, if there is a disagreement between an employee’s physician and an OWCP physician, OWCP will appoint an IME who shall make an examination.¹³ The case will therefore be remanded to OWCP for referral of appellant to an IME for resolution of the conflict in medical evidence in accordance with 5 U.S.C. § 8123(a).¹⁴ Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

¹² See *S.T.*, Docket No. 21-0906 (issued September 2, 2022).

¹³ See *V.B.*, Docket No. 19-1745 (issued February 25, 2021); *S.S.*, Docket No. 19-1658 (issued November 12, 2020); *C.S.*, Docket No. 19-0731 (issued August 22, 2019).

¹⁴ *V.B.*, *id.*; *S.M.*, Docket No. 19-0397 (issued August 7, 2019).

ORDER

IT IS HEREBY ORDERED THAT the May 28, 2025 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 26, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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