



## **ISSUE**

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include a right ankle condition as causally related to, or consequential to, the accepted August 12, 2020 employment injury.

## **FACTUAL HISTORY**

On August 19, 2020 appellant, then a 38-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on August 12, 2020 he sprained his left ankle when his left foot landed on a rock between the curb and asphalt as he stepped out of his vehicle while in the performance of duty. He stopped work on August 12, 2020. OWCP initially accepted the claim for left ankle ligament sprain. It paid appellant on the supplemental rolls, effective January 20, 2021, and on the periodic rolls effective July 17, 2022.

On July 25, 2023 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and list of questions, to Dr. Willie Thompson, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the nature and extent of his accepted employment-related left ankle sprain.

In a report dated August 7, 2023, Dr. Thompson noted his review of the SOAF and appellant's medical record, including magnetic resonance imaging (MRI) scans of the right and left ankles. Appellant's physical examination of the left knee and ankle revealed full ankle and hindfoot range of motion (ROM), no redness or edema, no ankle instability, intact Achilles tendon, 5/5 strength, and no evidence of instability. Based on his physical examination, Dr. Thompson opined that the diagnosed left ankle conditions had resolved without residuals. He further opined that there was no evidence of any underlying condition and denied that any preexisting injuries would have impacted upon the injury or the treatment provided. Dr. Thompson concluded that appellant did not require further medical treatment.

On August 14, 2023 OWCP amended its acceptance of left ankle sprain, to indicate that it had resolved.

On August 15, 2023 OWCP issued a proposed notice of termination, finding that Dr. Thompson's opinion represented the weight of the medical opinion evidence.

In a report dated September 5, 2023, Dr. Jennifer R. Seifert, a podiatrist Board-certified in foot and ankle surgery, provided appellant's physical examination findings of normal bilateral ankle ROM, normal bilateral foot and ankle alignment, no left swelling, mild right swelling, and bilateral peroneal tenderness. A review of left ankle and foot x-ray interpretations demonstrated no acute findings. Dr. Seifert diagnosed left ankle ligament sprain. She concluded that appellant's condition had plateaued, however he still had subjective instability. Dr. Seifert opined that appellant had reached maximum medical improvement (MMI) and was capable of a sedentary job. In a clinical update of even date, she diagnosed left ankle ligament sprain and recommended that appellant continue physical therapy.

By decision dated September 15, 2023, OWCP finalized the termination of appellant's medical benefits and wage-loss compensation effective that date.

On September 28, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on January 12, 2024.

In progress notes dated October 6, 2023, Dr. Seifert reiterated her prior findings and conclusions.

In a report dated February 5, 2024, Dr. Seifert related appellant's history of medical treatment for his left ankle, that his initial conservative treatment with physical therapy and bracing, was followed by left ankle surgery to repair his torn ligaments, tendon, and osteochondral lesion. During his recovery, appellant continuously complained of right ankle pain. Dr. Seifert noted that appellant's July 29, 2021 right ankle MRI scan revealed small segment peroneal split lateral ankle ligament scarring. She diagnosed right peroneal tendon partial tear which she attributed to overuse and additive stress from compensation while being treated for his left ankle condition, which had required four to six weeks of non-weight bearing. Dr. Seifert explained that appellant's right ankle condition was most likely attributable to chronic instability and overuse due to his left ankle condition. She also noted that appellant did not have any preexisting foot or ankle conditions prior to his accepted August 12, 2020 fall and, thus, his subsequent treatment and symptoms were causally related.

By decision dated March 28, 2024, OWCP's hearing representative reversed the September 15, 2023 termination decision, finding an unresolved conflict in the medical opinion evidence between Dr. Thomspson, an OWCP second opinion physician, and Dr. Seifert, appellant's treating physician, regarding whether his accepted employment-related condition had resolved without further disability or need for medical treatment.

On April 12, 2024 OWCP referred appellant, together with a SOAF, the medical record, and a series of questions, to Dr. David Weiss, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Seifert, for appellant, and Dr. Thompson, an OWCP referral physician, on the issues of whether appellant continued to have residuals of the accepted conditions and whether appellant sustained a consequential right ankle condition.

In reports dated April 30 and May 21, 2024, Dr. Seifert reiterated her prior findings and conclusions.

In a report dated June 4, 2024, Dr. Weiss, serving as the impartial medical examiner (IME), related appellant's history of injury and noted his review of the SOAF and the medical record. With regard to the left ankle, diagnosed chronic left ankle post-traumatic strain and sprain; left ankle instability with anterior talofibular ligament tear and calcaneofibular ligament tear; left ankle post-traumatic peroneal tendinitis; status post left ankle lateral ligament repair with arthroscopic instability, left ankle peroneal tendon tear; status post Brostrom left ankle lateral ligament repair with direct anterior talofibular ligament repair; and chronic left ankle post-traumatic posterior tibial dysfunction. Dr. Weiss disagreed that appellant's accepted condition had resolved, as appellant still had persistent objective findings of the left ankle, with diminished ROM, motor weakness, measurable atrophy, and toe signs involving the posterior tibial tendon. With regard to

the right ankle, he noted that due to appellant's complaints of right ankle pain, a right ankle MRI scan was performed on July 19, 2021, which revealed Achilles tendinosis with enthesopathic spur, tendinosis of the peroneal longus and brevis tendons, high grade partial thickness longitudinal split of the peroneus brevis tendon, scarring and fibrosis of the anterior talofibular ligament and calcaneofibular ligaments and thickening of the plantar fascia. On physical examination of the right ankle, Dr. Weiss found a well-healed surgical scar over the lateral aspect with, tenderness to palpitation, but no instability noted. While ROM that was restricted on dorsi-flexion, "his motor strength testing is completely normal." Dr. Weiss explained that a temporary abnormality in gait is unlikely to have any effect on the opposite leg, and the use of a case, cast, or crutches is also unlikely to have any major impact on the stress born by the uninjured limb. opined that the overuse issue to the right ankle condition has no relationship to the accepted August 12, 2020 employment injury.<sup>3</sup>

By decision dated October 31, 2024, OWCP denied appellant's claim for a consequential right ankle condition.

On November 7, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated January 13, 2025, OWCP's hearing representative set aside the October 31, 2024 decision, finding that further development of the evidence was warranted regarding whether appellant sustained a consequential right ankle condition. The hearing representative instructed OWCP to obtain a supplemental report from Dr. Weiss containing medical rationale for his opinion.

On January 17, 2025 OWCP requested clarification from Dr. Weiss.

In a February 12, 2025 addendum, Dr. Weiss reiterated that "there was no consequential right ankle issue and this was unrelated to the accepted work-related injury which was solely a left ankle issue." He explained that there was no clear evidence that an injury to one lower extremity would have any significant impact on the opposite uninjured extremity unless the original injury caused major muscle or nerve damage resulting in shortening of the lower extremity or complete paralysis of the damaged leg. Dr. Weiss explained that this was not the case with appellant's left lower extremity injury. He noted that on the day he examined appellant, his gastrocnemius muscle strength testing of both extremities was 5/5, and appellant had no complaints of nerve involvement regarding the left extremity. Thus, Dr. Weiss opined that appellant's right ankle injury could not be considered as directly or indirectly caused by the accepted employment injury.

On March 18, 2025 OWCP expanded the acceptance of the claim to include other instability of the left ankle, other specified joint disorders of the left ankle and foot (left ankle impingement), and peroneal tendinitis of the left leg.

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<sup>3</sup> On August 26, 2024 OWCP requested a supplemental opinion from Dr. Weiss. In an addendum dated September 30, 2024, Dr. Weiss found that appellant's left ankle had reached MMI.

On March 18, 2025 OWCP requested a supplemental report from Dr. Weiss based on an updated SOAF which included newly-expanded conditions.

In an April 2, 2025 supplemental report, Dr. Weiss noted that he reviewed the concept of derivative injury to the right ankle. He again explained that there is no clear evidence to suggest that an injury to one lower extremity would have any significant impact on the opposite uninjured limb unless appellant sustained a major muscle or nerve damage causing paralysis of the damaged limb which could result in either shortening of the injured lower extremity “so that the gait pattern has been altered to the extent that clinically there is no obvious lurching type gait.” That was not substantiated in appellant’s case. Dr. Weiss noted that this continues to be his referee opinion and that Dr. Seifert had no basis for her opinion that appellant had a partial tear to the right peroneal tendon.

By decision dated April 11, 2025, OWCP expanded the acceptance of appellant’s claim to include left lower leg peroneal muscle and tendon strain (tear of peroneal tendons, left ankle); left ankle ligament disorder (status post Brostrom repair, left lateral ankle ligaments); and posterior tibial tendinitis left leg (chronic post-traumatic posterior tibial dysfunction to left ankle). However, by separate decision dated April 11, 2025, OWCP denied appellant’s request for expansion of the claim to include a consequential right ankle condition.

On May 5, 2025 appellant requested a review of the written record by a representative of OWCP’s Branch of Hearings and Review.

By decision dated June 9, 2025, OWCP’s hearing representative affirmed the April 11, 2025 denial decision.

On August 19, 2025 appellant, through counsel, requested reconsideration and submitted a May 6, 2025 report, wherein Dr. Seifert diagnosed bilateral ankle sprains with chronic pathology. She opined that appellant injured both ankles at the time of accepted August 12, 2020 employment injury. Dr. Seifert related appellant had chronic right anterior talofibular ligament tearing due to his chronic instability. She concluded that appellant had reached MMI, was capable of sedentary work, and required no further medical intervention.

By decision dated August 21, 2025, OWCP denied modification.

### **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>4</sup> If 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

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<sup>4</sup> See *M.P.*, Docket No. 25-0674 (issued August 21, 2025); *A.M.*, Docket No. 22-0707 (issued October 16, 2023); *V.P.*, Docket No. 21-1111 (issued May 23, 2022); *S.B.*, Docket No. 19-0634 (issued September 19, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

misconduct.<sup>5</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>6</sup>

The claimant bears the burden of proof to establish a claim for a consequential injury.<sup>7</sup> As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship.<sup>8</sup> The opinion of the physician 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 employment injury.<sup>9</sup>

Section 8123(a) of FECA provides in pertinent part that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>10</sup> This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>11</sup> Where a case is referred to an IME for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include a right ankle condition as causally related to, or consequential to, the accepted August 12, 2020 employment injury.

OWCP properly determined that a conflict in medical opinion evidence arose between Dr. Seifert, appellant's treating physician, and Dr. Thompson, OWCP's second opinion physician. It referred appellant to Dr. Weiss for an impartial medical examination on the issues of whether

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<sup>5</sup> See *M.P., id.; 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>6</sup> *M.P., id.; J.M., id.; Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

<sup>7</sup> *M.P., id.; V.K.*, Docket No. 19-0422 (issued June 10, 2020); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

<sup>8</sup> *M.P., id.; F.A.*, Docket No. 20-1652 (issued May 21, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *M.P., id.; M.M.*, Docket No. 20-1557 (issued November 3, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>10</sup> 5 U.S.C. § 8123(a); *S.P.*, Docket No. 25-0134 (issued December 17, 2024); *A.E.*, Docket No. 23-0756 (issued December 14, 2023); *G.S.*, Docket No. 20-0562 (issued June 23, 2022); *M.S.*, 58 ECAB 238 (2007).

<sup>11</sup> 20 C.F.R. § 10.321.

<sup>12</sup> *Id.* at § 10.321; *S.P.*, *supra* note 10; *T.D.*, Docket No. 17-1011 (issued January 17, 2018); *James P. Roberts*, 31 ECAB 1010 (1980).

appellant continued to have residuals of the accepted conditions and whether appellant sustained a consequential right ankle injury, pursuant to 5 U.S.C. § 8123.

In a June 4, 2024 report, Dr. Weiss related appellant's history of injury and noted his review of the SOAF and the medical record. With regard to the right ankle, Dr. Weiss noted that due to appellant's complaints of right ankle pain, a right ankle MRI scan was performed on July 19, 2021, which revealed Achilles tendinosis with enthesopathic spur, tendinosis of the peroneal longus and brevis tendons, high grade partial thickness longitudinal split of the peroneus brevis tendon, scarring and fibrosis of the anterior talofibular ligament and calcaneofibular ligaments and thickening of the plantar fascia. On physical examination of the right ankle, he found a well-healed surgical scar over the lateral aspect with tenderness to palpitation, but no instability noted. While ROM that was restricted on dorsi-flexion, "his motor strength testing is completely normal." Dr. Weiss explained that a temporary abnormality in gait is unlikely to have any effect on the opposite leg, and the use of a case, cast, or crutches is also unlikely to have any major impact on the stress born by the uninjured limb, opined that the overuse issue to the right ankle condition has no relationship to the accepted August 12, 2020 employment injury. In a February 12, 2025 addendum, Dr. Weiss reiterated that "there was no consequential right ankle issue and this was unrelated to the accepted work-related injury which was solely a left ankle issue." He explained that there was no clear evidence that an injury to one lower extremity would have any significant impact on the opposite uninjured extremity unless the original injury caused major muscle or nerve damage resulting in shortening of the lower extremity or complete paralysis of the damaged leg. Dr. Weiss explained that this was not the case with appellant's left lower extremity injury. He noted that on the day he examined appellant, his gastrocnemius muscle strength testing of both extremities was 5/5, and appellant had no complaints of nerve involvement regarding the left extremity. Thus, Dr. Weiss opined that appellant's right ankle injury could not be considered as directly or indirectly caused by the accepted employment injury. In an April 2, 2025 supplemental report, he noted that he reviewed the concept of derivative injury to the right ankle. Dr. Weiss again explained that there is no clear evidence to suggest that an injury to one lower extremity would have any significant impact on the opposite uninjured limb unless appellant sustained a major muscle or nerve damage causing paralysis of the damaged limb which could result in either shortening of the injured lower extremity "so that the gait pattern has been altered to the extent that clinically there is no obvious lurching type gait." That was not substantiated in appellant's case. Dr. Weiss noted that this continues to be his referee opinion and that Dr. Seifert had no basis for her opinion that appellant had a partial tear to the right peroneal tendon.

The Board has reviewed the opinion of Dr. Weiss and notes that he provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Dr. Weiss further provided medical rationale for his opinion. Accordingly, the Board finds that Dr. Weiss' opinion constitutes the special weight of the medical evidence.

Appellant subsequently submitted a May 6, 2025 report, wherein Dr. Seifert diagnosed bilateral ankle sprains with chronic pathology. Dr. Seifert opined that appellant injured both ankles at the time of accepted August 12, 2020 employment injury. She related appellant had chronic right anterior talofibular ligament tearing due to his chronic instability. Dr. Seifert concluded that appellant had reached MMI, was capable of sedentary work, and required no further medical intervention. However, she had been on one side of the conflict in medical evidence which was resolved by Dr. Weiss as the IME. The Board has long held that reports from a physician who

was on one side of a medical conflict that an IME resolved, are generally insufficient to overcome the special weight accorded to the report of the IME, or to create a new conflict.<sup>13</sup>

As the medical evidence of record is insufficient to establish expansion of the acceptance of the claim to include additional conditions as causally related to the accepted employment injury, the Board finds that appellant has not met his 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 his burden of proof to expand the acceptance of his claim to include a right ankle condition as causally related to, or consequential to, the accepted August 12, 2020 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 21, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 18, 2026  
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

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<sup>13</sup> See *S.V.*, Docket No. 25-0688 (issued September 5, 2025); *E.B.*, Docket No. 24-0780 (issued June 5, 2025); *E.H.*, Docket No. 19-1352 (issued December 18, 2019).