

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

D.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Gretna, LA, Employer**

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**Docket No. 12-1615
Issued: February 13, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 20, 2012 appellant filed a timely appeal of a March 30, 2012 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 the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty.

FACTUAL HISTORY

On November 21, 2011 appellant, then a 45-year-old city carrier, filed a traumatic injury claim, alleging that on November 19, 2011 she fell into a hole while delivering mail and broke her toe. She stopped work on November 22, 2011.

¹ 5 U.S.C. §§ 8101-8193.

The record reflects that, on November 5, 2011, Dr. Stacy Siegendorf, a Board-certified internist treated appellant for bilateral foot pain with appellant noting that she was a postal worker who was on her feet daily and who had suffered a nonhealing foot fracture a year earlier. She noted an edema bilaterally, tenderness of the right foot at the base of the second toes into the second metatarsal across the top of the foot and a swollen second toe. Dr. Siegendorf noted that x-rays of appellant's feet showed continued nonunion of the second metatarsal. She diagnosed foot pain due to persistent nonhealing fracture, possibly due to steroids and a job where she was required to walk frequently.

Appellant was treated at an emergency facility by Dr. Patrick McNulty, a Board-certified orthopedist, on November 19, 2011, who prescribed pain medication. A right foot x-ray report of the same date noted an old fracture of the second metatarsal and a recent fracture across the proximal end of the second proximal phalanx. These images were reviewed and findings verified by Dr. Charles C. Matthews, a Board-certified radiologist. In discharge instructions, appellant was instructed to wear an orthotic and buddy tape the second and third toe. On December 31, 2011 Dr. McNulty noted that appellant had a fractured toe and bone in her foot and was disabled from performing her usual duties. In a return to work certificate dated December 15, 2011, Dr. Robert Treuting, a Board-certified orthopedist and associate of Dr. Siegendorf, noted that appellant was treated and could not work from November 19, 2011, to January 12, 2012. In a January 12, 2012 return to work certificate, Dr. Treuting noted that appellant was incapacitated for a right foot and toe injury until January 30, 2012.

On February 3, 2012 OWCP advised appellant of the type of evidence needed to establish her claim. It particularly requested that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific work factors.

Appellant submitted a December 15, 2011 report from Dr. Treuting who treated appellant in follow-up for chronic second metatarsal base fracture. Dr. Treuting noted that appellant had fallen on November 19, 2011 and reinjured her right foot and knee. He related that the emergency room report noted that appellant had a fracture at the base of the proximal phalanx of the second toe. Dr. Treuting stated that an x-ray revealed a healing fracture at the base of the proximal phalanx of the second toe which was not completely healed. He diagnosed chronic second metatarsal base fracture, stable and new fracture of the right second toe proximal phalanx. Dr. Treuting noted that appellant was disabled for four weeks when she would be reexamined. Appellant also submitted a December 15, 2011 report from Dr. Sara E. Fernandez, a Board-certified internist and an associate of Dr. Siegendorf who treated her for lupus and body and neck pain. She reported fracturing her right second toe in November while working. Appellant was diagnosed with toe and neck pain, diarrhea, lupus, anxiety and depression and chronic pain. She also submitted medical reports that were previously of record.

On March 30, 2012 OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish that the diagnosed medical condition was causally related to the established work-related events.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

To determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.³ The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁴

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

ANALYSIS

In the instant case, it is not disputed that appellant worked as a city carrier and that on November 19, 2011 she fell into a hole while delivering mail. It is also not disputed that she was diagnosed with a fracture of the right second toe proximal phalanx.

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Id.*

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

OWCP denied appellant's claim for compensation on the grounds that the medical evidence was not sufficient to establish that her medical condition of fracture of the right second toe of the proximal phalanx was causally related to her employment. However, the Board finds that, while the medical evidence submitted by her is not fully rationalized, it generally supports that she sustained a fracture of the right second toe of the proximal phalanx after falling into a hole while delivering mail on November 19, 2011. Specifically, a December 15, 2011 report from Dr. Treuting noted treating appellant in follow-up for chronic second metatarsal base fracture. Dr. Treuting noted that appellant had fallen on November 19, 2011 and reinjured her right foot and knee. He related that the emergency room report noted that appellant had a fracture at the base of the proximal phalanx of the second toe. Dr. Treuting noted an x-ray revealed a healing fracture of the base of the proximal phalanx of the second toe which was not completely healed. He diagnosed chronic second metatarsal base fracture, stable and new fracture of the right second toe proximal phalanx and noted that appellant was disabled for four weeks. Similarly, in a return to work certificate dated December 15, 2011, Dr. Treuting noted that appellant could not work from November 19, 2011 to January 12, 2012. In a January 12, 2012 return to work certificate, he noted that appellant was incapacitated for a right foot and toe injury until January 30, 2012. Although, Dr. Treuting's opinions are not sufficiently rationalized to carry appellant's burden of proof in establishing her claim, it is uncontroverted in the record, and factually consistent with the reports of appellant and therefore, are sufficient to require further development of the case by OWCP.⁷

Proceedings under FECA are not adversary in nature nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁸

Therefore, the Board finds that the case must be remanded to OWCP for preparation of a statement of accepted facts concerning appellant's working conditions and referral of the matter to an appropriate medical specialist, consistent with OWCP procedures, to determine whether she sustained a fracture of the right second toe of the proximal phalanx as a result of performing her employment duties. Following this and any other further development as deemed necessary, OWCP shall issue an appropriate merit decision on her claim.

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 this case is not in posture for decision.

⁷ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁸ *John W. Butler*, 39 ECAB 852 (1988).

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development in accordance with this decision of the Board.

Issued: February 13, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board