United States Department of Labor
Employees' Compensation Appeals Board

S.G., Appellant **and** **U.S. POSTAL SERVICE, POST OFFICE, Morrison, IL, Employer**	))))))))	**Docket No. 19-0041** **Issued: May 2, 2019**

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 8, 2018 appellant, through counsel, filed a timely appeal from a May 14, 2018 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a left ankle condition causally related to the accepted factors of her federal employment.

[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.*

FACTUAL HISTORY

On August 17, 2016 appellant, then a 32-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a left ankle injury, which was swollen and achy, resulting from the performance of her federal duties. OWCP assigned this claim OWCP File No. xxxxxx849. Appellant noted that she first became aware of her claimed condition and its relationship to her federal employment on August 10, 2016. She stopped work on August 15, 2016 and returned to work on August 16, 2016.[3]

OWCP subsequently received a doctor's excuse dated August 10, 2016 from Dr. Michael D. Williams, an attending podiatrist. Dr. Williams indicated that appellant could return to work on August 31, 2016.

In an August 15, 2016 attending physician's report (Part B of a Form CA-16 authorization for examination and/or treatment), Dr. Nicole D. Eustace, an attending family practitioner, indicated that appellant previously had a complicated sprained left foot and that she presented with new symptoms. She provided examination findings of the ankle and diagnosed tendinitis. Dr. Eustace checked a box marked "yes" indicating that the diagnosed condition was caused or aggravated by the employment activity described. She noted that appellant was disabled from August 15 through 16, 2016 and that she could resume her regular work on August 17, 2016.

In a development letter dated August 31, 2016, OWCP notified appellant of the factual and medical deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP subsequently received a duty status report (Form CA-17) dated August 19, 2016 by Dr. Eustace who provided a history that, on August 10, 2016, appellant had a swollen and very painful left ankle. She reiterated her diagnosis of tendinitis and noted that appellant was unable to work for two weeks.

X-ray reports dated August 16, 2016 from Dr. Reid M. Schroeder, a Board-certified diagnostic radiologist, were also received. In an August 16, 2016 left foot x-ray report, Dr. Schroeder provided an impression of a normal study. In an August 16, 2016 left ankle x-ray report, he provided an impression of no fracture deformity pain. In both reports, Dr. Schroeder noted that the reason for the tests was for a work-related injury.

Appellant submitted a duplicate copy of OWCP's August 31, 2016 development letter, which contained handwritten notes indicating that she was scheduled to undergo surgery on September 13, 2016 by Dr. Williams and that she would submit the results of a magnetic resonance imaging (MRI) scan.

Appellant also submitted additional medical evidence. In a chart note dated August 15, 2016, Dr. Eustace noted appellant's complaint of pain in her right ankle and heel and left ankle. She also noted that appellant had a history of a prior right ankle injury. Dr. Eustace examined her

[3] On August 15, 2016 the employing establishment offered appellant a full-time, light-duty position. Appellant accepted the position on that date.

right and left lower extremities and diagnosed left foot acute tendinitis. She placed appellant off work for the remainder of the day of her examination to rest and elevate the lower extremity.

In a progress note dated August 16, 2016, Dr. Williams reported that appellant related a history that approximately one year prior she twisted her left ankle and immediately experienced swelling in the ankle while on her mail route. He noted that she continued to have pain. Dr. Williams discussed findings on physical examination and reviewed radiographs of the left foot and ankle. He assessed appellant as having left foot pain and posterior tibial tendinitis and left ankle lateral sprain/instability. Dr. Williams ordered a left foot and ankle MRI scan to evaluate lateral ligament structures and medial tenderness structures of the left foot and ankle. He placed appellant off work for two weeks in anticipation that she would not be able to immediately undergo the MRI scan. Dr. Williams discussed left ankle MRI scan results in a progress note dated August 30, 2016. He reexamined appellant's left foot and ankle and reported his findings. Dr. Williams reiterated his assessment of chronic left ankle sprain and lateral instability. He further assessed appellant as having mild peroneus brevis tendinitis. Dr. Williams addressed her treatment plan, including surgical intervention for the left ankle.

An unsigned report dated August 16, 2016 noted appellant's medical and social history.

A chart note dated August 19, 2016 by Kimberly Feary[4] indicated that Dr. Williams had ordered a left ankle MRI scan. She noted that appellant claimed that this was a workers' compensation claim against the employing establishment.

On August 22, 2016 Dr. Keith I. Pham, a Board-certified diagnostic radiologist, performed an MRI examination of appellant's left ankle. He provided an impression of posterior tibialis tendinosis and likely longitudinal split of the peroneus brevis tendon. Dr. Pham found that the peroneus brevis tendon remained attached to the fifth metatarsal base. He also provided an impression of likely partial-thickness ligamentous sprain involving the posterior talofibular ligament component of the deltoid ligament. Dr. Pham related that the thickening of the anterior talofibular ligament was most likely a previous partial thickness injury with resulting scar/fibrosis. He further provided an impression of no fracture and unremarkable ankle and subtalar joints.

In a chart note dated September 2, 2016, Dr. Eustace indicated that appellant presented for preoperative history and physical examination for her left ankle surgery to be performed on September 13, 2016 by Dr. Williams. She related appellant's history and reported examination findings. Dr. Eustace provided preoperative clearance for the planned podiatric procedure.

Dr. David Yeager, a podiatrist, completed a duty status report (Form CA-17) on October 3, 2016. He noted the date of injury as August 10, 2016. Dr. Yeager also noted that appellant had recurring left ankle pain. He described clinical findings of positive pain in the medial and lateral aspects of the right ankle. Dr. Yeager indicated that a diagnosis due to injury was not applicable. He related that appellant had been advised to resume work with restrictions on the date of his examination.

[4] The Board notes that Ms. Feary's professional qualifications are not contained in the case record.

By decision dated November 2, 2016, OWCP denied appellant's occupational disease claim finding that the evidence of record was insufficient to establish that her claimed employment factors occurred as alleged.

OWCP subsequently received an additional duty status report (Form CA-17) dated December 28, 2016, wherein Dr. Yeager reiterated the date of injury as August 10, 2016. Dr. Yeager noted a history of left ankle stabilization. He described clinical findings of past left ankle lateral stabilization. Dr. Yeager related that on January 23, 2017 appellant had been advised to resume work with restrictions. He indicated that she was transitioning from a controlled ankle motion (CAM) boot. In discharge instructions dated January 18, 2017, Dr. Yeager restated appellant's work capacity and need to wear a CAM boot.

On January 30, 2017 appellant, through counsel, requested reconsideration of OWCP's November 2, 2016 decision. She submitted a December 6, 2016 office note by Dr. Yeager in which he noted that he concurred with appellant who maintained that her surgery was due to a November incident where she twisted her left ankle and sustained ligamentous damage when a friendly dog jumped on her and there was a crack in a driveway while she was delivering mail.[5] Dr. Yeager also noted that she received conservative medical treatment and obviously opted for surgical intervention. He discussed findings on examination and assessed appellant as doing fine status post lateral ankle stabilization with medial ankle stabilization of the peroneous brevis tendon and delayed primary repair of a ruptured anterior talofibular ligament, and ankle athrotomy. Dr. Yeager advised that appellant would remain off work. In a February 13, 2017 duty status report (Form CA-17), he restated the findings and statements set forth in his December 28, 2016 report.

By decision dated March 9, 2017, OWCP denied modification of its November 2, 2016 decision, finding that Dr. Yeager's reports failed to address causal relationship between appellant's left ankle condition and her work duties.

OWCP received additional duty status reports (Form CA-17) dated April 18, May 24, June 27, and September 25, 2017 by Dr. Yeager who continued to reiterate the findings and statements set forth in his December 28, 2016 report with the exception that in his June 27 and September 25, 2017 reports he advised that appellant could perform her regular work with restrictions. In the September 25, 2017 report, Dr. Yeager indicated that she could work four hours a day. He listed appellant's work restrictions in discharge instructions dated April 20, 2017.

On March 9, 2018 appellant, through counsel, requested reconsideration of OWCP's March 9, 2017 decision. She submitted a July 25, 2017 letter from Dr. Yeager. Dr. Yeager related a history that appellant sustained a left ankle injury due to the dog jumping incident that occurred on November 13, 2015. He noted that she was diagnosed as having a severe sprained ankle. Appellant was off work for about 12 to 16 weeks and returned to light-duty work wearing an ankle brace at all times. Dr. Yeager noted that she struggled to perform her work duties due to worsening left ankle problems. He further noted that Dr. Williams referred appellant to him for surgical consultation and evaluation. Dr. Yeager maintained that she was progressing nicely. He related,

[5] Appellant filed a traumatic injury claim (Form CA-1) under OWCP File No. xxxxxx205 for an injury sustained on November 5, 2015. OWCP accepted the claim for sprain of unspecified ligament of the left ankle and sprain of unspecified part of the left wrist and hand.

however, that appellant had not yet reached maximum medical improvement. Dr. Yeager indicated that she believed that she would be ready in one month.

In a left foot x-ray report dated September 23, 2016, Dr. Cheryl A. Schwalm, a diagnostic radiologist, provided an impression of no acute traumatic abnormalities shown.

In an October 19, 2016 left ankle x-ray report, Dr. Donald Pierantozzi, a Board-certified diagnostic radiologist, found an overlying cast that obscured bony detail. He also found that alignment was satisfactory. In addition, Dr. Pierantozzi found no acute fracture or dislocation and postsurgical hardware that overlaid the anterior calcaneus.

In an October 19, 2016 operative report, Dr. Yeager provided a preoperative and post-operative diagnosis of chronic left ankle lateral ankle instability. He performed Lee lateral ankle stabilization using screw fixation, ankle arthrotomy, delayed primary repair of anterior talofibular ligament, primary deltoid repair, and peroneus brevis tubularization and repair of the left ankle. Dr. Yeager, in an office note dated October 28, 2016, continued to examine appellant. He reviewed diagnostic test results and provided an assessment that appellant was doing fine status post one week her October 19, 2016 surgery. In prescriptions dated December 6 and 27, 2016, Dr. Yeager ordered crutches, a CAM boot, rehabilitation services, and physical therapy for appellant.

Treatment notes dated December 23 and 29, 2016 from appellant's physical therapist addressed the treatment of appellant's left ankle and foot.

On March 27, 2017 Dr. Stephen D. Palmer, a podiatrist, reported that appellant was examined for follow-up of her left ankle lateral stabilization. He discussed findings on physical examination and assessed her as having an unstable left ankle that was improving based on clinical status details.

On April 3, 2018 appellant responded to OWCP's August 31, 2016 development questionnaire. She described the employment duties that she believed contributed to her condition/injury. Appellant alleged that her job duties involved walking/delivering mail to each box along a designated route on different surfaces and under different hazards on a daily basis. She maintained that the surfaces had uneven grass/dirt and unexpected drops or holes, especially when a surface met with landscaping such as, sidewalks, wooden timbers, and/or edging used on different property markers, decorations, and/or entrances/exits. Appellant related that daily hazards and factors included animals which may be unexpectedly outside or natural hazards such as, rocks, sticks and holes. She worked 8 to 10 hours a day. Appellant stood for two hours a day while sorting mail and loading her truck. The remaining five to seven hours involved returning empty equipment and bringing mail back to the office. Appellant contended that she sustained an ankle injury when a resident's dog jumped on her while she was walking across a driveway to deliver mail. She maintained that her foot hit a large crack in the resident's driveway and it became swollen and she was unable to walk. Appellant claimed that her ankle was not an issue prior to her injury. She never had any injuries, aches, pain, and did not need any treatment. Appellant also claimed that she had no activities outside her federal employment other than raising her daughter, did not participate in any sports, and was on her computer for a maximum of two hours a week.

By decision dated May 14, 2018, OWCP affirmed its March 9, 2017 decision, as modified. It found that appellant had established the factual portion of her claim. However, the claim remained denied as appellant had not provided a rationalized medical opinion explaining how her diagnosed left ankle condition and October 19, 2016 surgery were causally related to the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 timely filed within the applicable time limitation period of FECA,[6] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[7] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[8] To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;[9] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[10] and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[11]

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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 employee.[12]

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[6] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.,* 59 ECAB 178 (2007); *Joe D. Cameron,* 41 ECAB 153 (1989).

[7] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.,* 59 ECAB 427 (2008); *James E. Chadden, Sr.,* 40 ECAB 312 (1988).

[8] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett,* 41 ECAB 992 (1990).

[9] *Michael R. Shaffer,* 55 ECAB 386 (2004).

[10] *Marlon Vera,* 54 ECAB 834 (2003); *Roger Williams,* 52 ECAB 468 (2001).

[11] *Beverly A. Spencer,* 55 ECAB 501 (2004).

[12] *See J.R.,* Docket No. 17-1781 (issued January 16, 2018); *I.J.,* 59 ECAB 408 (2008).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left ankle condition causally related to the accepted factors of her federal employment.

In support of her claim, appellant submitted a series of reports from Dr. Eustace, an attending physician. In an attending physician's report (Part B for a Form CA-16) dated August 15, 2016, Dr. Eustace indicated that she examined appellant on that date. She discussed appellant's history of a prior complicated sprained left foot and noted that appellant presented with new symptoms. Dr. Eustace noted findings on examination of the left ankle and diagnosed tendinitis. She checked a box marked "yes" indicating that the diagnosed condition was caused or aggravated by the employment activity described. Dr. Eustace advised that appellant was disabled from August 15 through 16, 2016 and that she could resume her regular work on August 17, 2016. The Board has held that a medical report that addresses causal relationship with a checkmark, without rationale explaining how the employment incident caused or aggravated the diagnosed condition, is of diminished probative value and insufficient to establish causal relationship.[13] Dr. Eustace failed to offer medical rationale explaining how appellant's diagnosed left ankle condition was caused or aggravated by the accepted employment factors. The need for rationale is particularly important as the record indicates that she had a prior history of left ankle conditions.[14] Dr. Eustace's remaining reports and chart notes are of no probative value because they did not relate appellant's diagnosis of left ankle and foot tendinitis, September 13, 2016 surgery, and disability from work to the accepted employment factors.[15] For the reasons stated, the Board finds that Dr. Eustace's reports and chart notes are insufficient to establish appellant's burden of proof.

Appellant also submitted a series of reports from Dr. Yeager. In a December 6, 2016 office note and July 25, 2017 report, Dr. Yeager discussed appellant's previously accepted employment-related left ankle condition and resultant surgery. In the December 6, 2016 office note, he reported examination findings and provided an assessment that appellant was doing fine status postsurgery. Dr. Yeager did not attribute appellant's left ankle surgery to the established employment factors. He agreed with her belief that her surgery was due to the previously accepted November 5, 2015 employment-related injury. In the July 25, 2017 report, Dr. Yeager noted that appellant's left ankle condition worsened after she returned to light-duty work, but such a generalized statement is insufficient to establish causal relationship. He did not provide sufficient medical rationale explaining how appellant's new or preexisting left ankle conditions were caused or aggravated by the accepted employment factors. As noted above, the need for rationale is particularly important as the record indicates that appellant had a prior history of left ankle conditions.[16] Dr. Yeager's October 19, 2016 operative report did not contain an opinion on the cause of appellant's diagnosed

[13] *See S.C.,* Docket No. 18-1242 (issued March 13, 2019).

[14] *See M.B.,* Docket No. 17-0688 (issued March 15, 2018).

[15] *See L.B.,* Docket No. 18-0533 (issued August 27, 2018); *D.K.,* Docket No. 17-1549 (issued July 6, 2018) (medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship).

[16] *M.B., supra* note 14.

conditions.[17] His remaining reports did not provide a history of injury, a firm diagnosis of a particular medical condition, nor a rationalized opinion regarding causal relationship.[18] For the reasons set forth above, the Board finds that Dr. Yeager's office note and reports are insufficient to establish appellant's burden of proof.

Dr. Williams' medical notes diagnosed left foot pain and posterior tibial tendinitis and left ankle lateral sprain/instability and addressed appellant's disability from work. Dr. Palmer's report diagnosed unstable left ankle that was improving based on clinical status details following appellant's left ankle lateral stabilization. Neither physician provided an opinion that the diagnosed conditions and appellant's surgical treatment and disability were caused or contributed to by the accepted employment factors.[19] The Board finds, therefore, that the reports of Dr. Williams and Dr. Palmer are insufficient to establish appellant's burden of proof.

The diagnostic studies of record from Drs. Schroeder, Pham, Schwalm, and Pierantozzi failed to provide firm left foot and ankle diagnoses resulting from the accepted employment factors. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between the accepted employment factors and a diagnosed condition.[20]

The treatment notes from appellant's physical therapist have no probative medical value in establishing appellant's claim as a physical therapist is not considered a "physician" as defined under FECA.[21] As such, this evidence is also insufficient to meet appellant's burden of proof.

Appellant also submitted an unsigned report dated August 16, 2016 and a chart note dated August 19, 2016 from Ms. Feary. However, such evidence has no probative medical value on the issue of causal relationship as these reports were not signed by a physician.[22]

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[17] *Supra* note 15.

[18] *See L.M.,* Docket No. 18-0473 (issued October 22, 2018).

[19] *Supra* note 15.

[20] *See E.V.,* Docket No. 18-1617 (issued February 26, 2019); *R.G.,* Docket No. 18-1045 (issued February 1, 2019).

[21] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See* 5 U.S.C. § 8102(2); *S.A.,* Docket No. 16-1128 (issued November 24, 2017); *M.M.,* Docket No. 16-1617 (issued January 24, 2017); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants and physical therapists are not competent to render a medical opinion under FECA). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

[22] *See* 5 U.S.C. § 8101(2); *J.R.,* Docket No. 17-1781 (issued January 16, 2018); *Merton J. Sills,* 39 ECAB 572, 575 (1988).

As appellant has not submitted rationalized medical evidence sufficient to establish an injury causally related to the accepted employment factors she has not met her burden of proof.[23]

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 establish a left ankle condition causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 2019
Washington, DC

Christopher J. Godfrey, 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

[23] The Board notes that the case record contains a portion of a Form CA-16 Authorization for Examination and/or Treatment. However, a Form CA-16, when fully completed and properly executed would relieve appellant of financial responsibility for the medical service(s) received. *See N.B.*, Docket No. 17-0927 (issued April 18, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).