

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

L.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Greensboro, NC, Employer**

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**Docket No. 19-1550
Issued: July 6, 2020**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On July 15, 2019 appellant, through counsel, filed a timely appeal from a May 6, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish left ankle and foot conditions causally related to the accepted June 4, 2018 employment incident.

FACTUAL HISTORY

On June 7, 2018 appellant, then a 40-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on June 4, 2018, she injured her left ankle when returning to her mail truck after delivering a package, a dog started barking, she saw a snake, and as she moved quickly she stepped into a hole in high grass while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that she was injured in the performance of duty and had stopped work on June 5, 2018.

A June 5, 2018 duty status report (Form CA-17) from Dr. Stephen Kinard, a podiatry specialist, noted that appellant was injured when she turned her left ankle after she saw a snake and jumped back into her vehicle. Dr. Kinard diagnosed a left ankle sprain and advised that she could not return to work.

In a June 14, 2018 development letter, OWCP indicated that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work, and that based on these criteria and because the employing establishment did not controvert the continuation of pay (COP) or challenge the merits of the case, payment of a limited amount of medical expenses was administratively approved. The merits of the claim, however, had not been formally considered. OWCP advised appellant that the documentation received to date was insufficient to establish her claim for FECA benefits. It explained that the evidence of record was insufficient to establish that she sustained an injury in the performance of duty, as alleged. OWCP advised appellant of the factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. It afforded her 30 days to submit the requested factual and medical evidence.

A July 10, 2018 form signed by Dr. Kinard advised that appellant could not return to work until August 18, 2018.

By decision dated August 2, 2018, OWCP denied appellant's traumatic injury claim finding that the evidence of record failed to establish that she sustained an injury in the performance of duty, as alleged.

On August 15, 2018 appellant requested reconsideration and submitted additional medical evidence.

In a June 5, 2018 report, Dr. Kinard indicated that appellant complained of moderate left ankle pain. He noted that the onset of her left ankle pain was sudden and occurred while she was working on June 4, 2018 when "she stepped into a hole about one foot deep and sprained her ankle." Dr. Kinard conducted a physical examination of appellant's left ankle, which revealed pain upon palpation, dorsiflexion, plantarflexion, inversion, eversion, and range of motion. He noted an antalgic gait on the left side. Dr. Kinard indicated that appellant's x-ray displayed

degenerative joint disease with mild spurring of the left ankle, and that no fractures were noted. He indicated that an ultrasound of her left ankle revealed an area of inflammation with increased vascularity in the lateral left ankle. Dr. Kinard diagnosed sprain of an unspecified ligament in the left ankle, left ankle contracture, other enthesopathy of the left foot, and pain in the left ankle and joints of the left foot. He prescribed pain medication and provided her with a controlled ankle motion boot.

In a July 10, 2018 report, Dr. Kinard noted that appellant stated that her foot pain was worsening. He indicated that she claimed that while at work she tripped and injured her ankle while running from a dog. Dr. Kinard continued to diagnose sprain of an unspecified ligament in the left ankle, left ankle contracture, other enthesopathy of the left foot, and pain in the left ankle and joints of the left foot. He administered a steroid injection *via* ultrasound.

In an August 7, 2018 report, Dr. Kinard indicated that appellant continued to present with foot pain, but noted that it had improved since her last visit, which allowed her to increase her activity level and perform more activities of daily living. He continued to diagnose sprain of an unspecified ligament in the left ankle, left ankle contracture, other enthesopathy of the left foot, and pain in the left ankle and joints of the left foot. Dr. Kinard additionally diagnosed plantar fascial fibromatosis and administered an additional steroid injection *via* ultrasound.

By decision dated November 5, 2018, OWCP denied appellant's reconsideration request finding that the evidence of record was insufficient to warrant review of the August 2, 2018 OWCP decision.

On April 12, 2019 appellant, through counsel, requested reconsideration. In an accompanying letter, appellant indicated that the previous decision should be overturned based on the new evidence provided, specifically the new medical reports by Dr. Kinard.

A July 10, 2018 return to work form by Dr. Kinard, indicated that appellant could not return to work until August 18, 2018. An August 7, 2018 return to work form noted that appellant could not return to work until September 10, 2018.

In an August 23, 2018 report, Dr. Kinard noted that appellant had pain in the left ankle and joints of the left foot and indicated that he provided appellant with an ankle foot orthosis.

Dr. Kinard indicated in a September 4, 2018 report, that appellant complained of increasing foot pain. He continued to diagnose an unspecified ligament in the left ankle, left ankle contracture, other enthesopathy of the left foot, pain in the left ankle and joints of the left foot, and plantar fascial fibromatosis.

In a September 4, 2018 return to work form, Dr. Kinard advised that appellant could not return to work until October 8, 2018. In an October 2, 2018 return to work form, he indicated that appellant could return to work full duty with no restrictions on October 18, 2018.

In reports dated October 2, 2018 and January 8, 2019, Dr. Kinard noted that appellant's foot pain was improving. He referenced the ankle and foot conditions he had diagnosed in his August 7, 2018 report.

In a February 12, 2019 report, Dr. Kinard noted that appellant's ankle pain was worsening. He listed diagnoses of left ankle contracture, left foot enthesopathy, left ankle sprain, and plantar fascial fibromatosis.

Appellant continued to follow up with Dr. Kinard through March 28, 2019 for her left foot and ankle pain. In a report dated March 28, 2019, Dr. Kinard continued to diagnose a sprain of an unspecified ligament in the left ankle, left ankle contracture, other enthesopathy of the left foot, pain in the left ankle and joints of the left foot, plantar fascial fibromatosis, and "right" foot pain.

By decision dated May 6, 2019, OWCP modified its August 2, 2018 decision finding that the evidence of record was sufficient to establish that the alleged incident occurred as alleged. However, it continued to deny appellant's claim as the evidence of record failed to establish a causal relationship between her diagnosed conditions and the accepted June 4, 2018 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶ To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁷ Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁸ The second component is whether the employment incident caused a personal injury.⁹ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish

³ *Id.*

⁴ *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *M.G.*, Docket No. 18-1616 (issued April 9, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ 20 C.F.R. § 10.115; *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁸ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

that the disability or specific condition for which compensation is being claimed is causally related to the injury.¹⁰

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 incident.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish left ankle and foot conditions causally related to the accepted June 4, 2018 employment incident.

In support of her claim, appellant submitted a series of medical reports from her attending podiatrist, Dr. Kinard. In his reports he noted the history of injury, provided examination findings, diagnosed a sprain of an unspecified ligament in the left ankle, left ankle contracture, other enthesopathy of the left foot, and noted ongoing pain in the left ankle and joints of the left foot and assigned restrictions. However, none of the reports from Dr. Kinard provide an opinion on the issue of causal relationship. The Board has held that 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.¹² In his reports dated June 5 and July 10, 2018 Dr. Kinard noted that the onset of her left ankle pain was sudden and occurred while she was working on June 4, 2018 when "she stepped into a hole about one foot deep and sprained her ankle." However, the mere recitation of patient history does not suffice for purposes of establishing causal relationship between a diagnosed condition and an employment incident.¹³ Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's reports are of limited probative value.¹⁴ For these reasons, the Board finds that the reports by Dr. Kinard are insufficient to establish appellant's claim.

As appellant failed to submit rationalized medical evidence establishing that a diagnosed left ankle or foot condition was causally related to the accepted June 4, 2018 employment incident the Board finds that she has not met her burden of proof to establish her claim.¹⁵

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 and 20 C.F.R. §§ 10.605 through 10.607.

¹⁰ *J.P.*, *supra* note 4; *L.T.*, *supra* note 8; *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *N.S.*, Docket No. 19-0167 (issued June 21, 2019); *J.G.*, Docket No. 17-1382 (issued October 18, 2017).

¹⁴ *M.N.*, Docket No. 19-0694 (issued September 3, 2019); *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

¹⁵ *See J.T.*, Docket No. 18-1755 (issued April 4, 2019); *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish left ankle and foot conditions causally related to the accepted June 4, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 6, 2020
Washington, DC

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

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board