United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 20-0266**
	)	**Issued: January 8, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Greensboro, NC, Employer	)	

Appearances:
Erik Blowers, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On November 15, 2019 appellant, through counsel, filed a timely appeal from a November 8, 2019 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.

[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 right lower extremity conditions causally related to the accepted October 11, 2017 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are set forth below.

On November 3, 2017 appellant, then a 59-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 11, 2017 she was exposed to extreme heat and humidity and rolled her pant legs up to her lower knees to cool down while in the performance of duty. She continued to work and later noticed that her right leg was feeling uncomfortable, she then rolled her pant leg down, but continued to experience pain and stiffness. Appellant indicated on the claim form that she was diagnosed with right leg rhabdomyolysis and nerve damage. On the reverse side of the claim form, appellant's supervisor, A.K., controverted the claim, asserting that appellant voluntarily chose to roll up her pants, thus impairing circulation to her leg. Appellant stopped work on October 11, 2017.

In a development letter dated November 16, 2017, OWCP informed appellant that the evidence of record was insufficient to establish her traumatic injury claim. It advised her of the type of medical and factual evidence needed and afforded her 30 days to submit additional evidence.

In a letter dated November 17, 2017, the employing establishment controverted the claim.

OWCP subsequently received a November 6, 2017 medical report, wherein Dr. Zoe A. Stallings, Board-certified in family medicine, reported that appellant presented for evaluation of a work-related condition. Appellant worked as a rural carrier and reported an injury when she rolled up her pant leg to her right knee and experienced pain and heat, especially in the calf. She then rolled her pant leg down and experienced severe pain, causing her to seek emergency medical treatment. Appellant was admitted to the hospital for rhabdomyolysis (nontraumatic). She referred her to a neurologist due to her sensory nerve disorder.

By decision dated December 20, 2017, OWCP denied the claim, finding that the evidence of record was insufficient to establish a medical condition causally related to the accepted employment incident.

On March 15, 2018 appellant, through counsel, requested reconsideration and submitted a January 8, 2018 report from Dr. Kathleen E. Zeller, a family practitioner. Dr. Zeller reported that appellant complained of right foot pain as a result of standing, climbing steps, driving, and walking. She noted that on October 12, 2017 appellant injured her right foot when she stepped out of her mail vehicle and rolled her ankle. Dr. Zeller diagnosed sprain of the tibiofibular ligament

[3] *Order Remanding Case*, Docket No. 19-0286 (issued August 22, 2019).

of the right ankle initial encounter, plantar fascial fibromatosis, and a sprain of deltoid ligament of the right ankle initial encounter. She opined that appellant sustained her injury as a direct result of delivering mail.

By decision dated May 25, 2018, OWCP denied modification of the December 20, 2017 decision.

On June 18, 2018 appellant, through counsel, requested reconsideration.

OWCP thereafter received a report dated June 12, 2018 from Dr. Tuan Huynh, a family practitioner. Dr. Huynh discussed appellant's medical history and diagnosed sprain of tibiofibular ligament of the right ankle, plantar fascial fibromatosis, and sprain of deltoid ligament of the right ankle as a result of stepping out of her vehicle and rolling her ankle on October 11, 2017. He noted that Dr. Zeller's January 8, 2018 medical report incorrectly referenced the date of injury as October 12, 2017 because that was the date appellant was admitted to the hospital for treatment of her October 11, 2017 injury. Dr. Huynh described the mechanism of injury pertaining to appellant's employment duties as a rural carrier and the October 11, 2017 employment incident. He discussed appellant's repetitive employment duties as a letter carrier over the course of 23 years and how these work factors contributed to her October 11, 2017 injury. Dr. Huynh explained that constant standing and walking put repetitive stress and pressure on the plantar fascia, causing the fascia to suffer from inflammation and contribute to appellant's diagnosis of plantar fascial fibromatosis. The traumatic incident that appellant related involved rotating and twisting her foot and ankle to exit her vehicle on October 11, 2017 which he opined undoubtedly contributed to the sprain of the tibiofibular ligament of the right ankle and the sprain of the deltoid ligament of the right ankle. Dr. Huynh also explained that stepping out of the mail vehicle onto an uneven surface contributed to the sprain of deltoid ligament of right ankle which was evident given the asymptomatic condition of her lower leg prior to that date. He concluded that the original traumatic injury occurred when appellant was delivering a package on October 11, 2017 as she stepped out of her mail vehicle and rolled her ankle, resulting in immediate pain and injury to her right foot and ankle.

In a letter dated July 23, 2018, A.K. controverted the claim on behalf of the employing establishment.

By decision dated September 10, 2018, OWCP denied modification of the May 25, 2018 decision.

On October 10, 2018 appellant, through counsel, again requested reconsideration.

In an accompanying September 19, 2018 signed sworn statement, appellant attested that on October 11, 2017, she was exiting her vehicle to deliver a package when she encountered an uneven surface/steps on a sidewalk. She stepped onto this surface and rolled her ankle under the weight of her body. Appellant reported that it was very hot on that date and after she rolled her ankle, she was sweating and overheated so she decided to roll up her sleeves and pant legs to try to cool herself down. She continued to deliver mail and realized she was truly hurt when she finished her route, not knowing if rolling her pants up or rolling her ankle was the cause of her condition. Appellant sought emergency medical treatment the following day where a physician

diagnosed rhabdomyolysis and nerve damage. She explained that she knew her injury occurred on October 11, 2017 while delivering mail, but she did not know what caused it.

By decision dated October 25, 2018, OWCP denied appellant's request for reconsideration without conducting a merit review.

Following OWCP's October 25, 2018 decision, supervisor A.K. submitted an October 30, 2018 letter on behalf of the employing establishment further challenging the claim.

A copy of an October 30, 2017 Form CA-1 was provided, which was handwritten and signed by appellant. On the Form CA-1, appellant described the cause of the injury as, "Extremely hot and humid day, turning to deal with the heat, rolled pant legs up to lower knees. Continued to work. [Appellant subsequently] noticed right leg was feeling uncomfortable. Rolled pant leg down because painful and stiff." Appellant further described the nature of the injury as, "Rhabdomyolysis in right leg, temperature nerve damage."

On November 20, 2018 appellant, through counsel, filed an appeal before the Board. On August 22, 2019 the Board set aside the October 25, 2018 decision and remanded the case to OWCP to consider all of the evidence submitted on reconsideration.[4] The Board found that although appellant's September 19, 2018 signed sworn statement was part of the case record that was before OWCP at the time of its October 25, 2018 decision, it was not acknowledged or considered in its October 25, 2018 decision.

On remand OWCP evaluated the evidence submitted, including appellant's September 19, 2018 signed sworn statement, and reviewed the merits of the case. By decision dated November 8, 2019, it again denied modification of its September 10, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[7]

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of

[4] *Id.*

[5] *Supra* note 2.

[6] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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 injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[10] The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statements in determining whether a *prima facie* case has been established.[11] An employee's statements alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[12]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve.[13] 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 identified by the employee.[14]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed right lower extremity condition causally related to the accepted October 11, 2017 employment incident.

In a November 6, 2017 medical report, Dr. Stallings described the history of injury as related by appellant in her Form CA-1. She explained that appellant presented for evaluation

[8] *B.H.*, Docket No. 20-0734 (issued November 13, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *E.M.*, Docket No. 20-0651 (issued November 12, 2020); *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *Y.G.*, Docket No. 20-0688 (issued November 13, 2020): *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667-71 (1987).

[11] *See Y.G., id.; L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

[12] *M.H.*, Docket No. 20-0576 (issued August 6, 2020); *see M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

[13] *E.M., supra* note 9; *Robert G. Morris*, 48 ECAB 238 (1996).

[14] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

following a work-injury as a rural carrier when she rolled her pant leg up to her right knee and experienced pain and heat most noticeably in the calf, and then rolled her pant leg down resulting in severe pain. Dr. Stallings noted that she was admitted to the hospital for rhabdomyolysis (nontraumatic). She referred appellant to a neurologist due to her sensory nerve disorder. The Board notes that Dr. Stallings did not provide an opinion on 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.[15] Accordingly, this report is insufficient to meet appellant's burden of proof.

While in his January 8, 2018 report Dr. Zeller diagnosed plantar fascial fibromatosis and a sprain of deltoid ligament of the right ankle which she opined was a direct result of delivering mail, she made no reference to the events surrounding the accepted October 11, 2017 employment incident of the rolling up of her pant leg. Without any description of the employment incident, her report is not based upon a proper factual background and is therefore insufficient to establish causal relationship.[16]

In his June 12, 2018 report, Dr. Huynh also diagnosed sprain of tibiofibular ligament of the right ankle, plantar fascial fibromatosis, and sprain of deltoid ligament of the right ankle which he related to an employment incident when appellant stepped out of her vehicle and rolled her ankle. He failed to provide an accurate history of injury as identified by appellant on her Form CA-1 and the initial medical reports of record.[17] As such, this report is insufficient to meet appellant's burden of proof.[18]

As there is no rationalized medical evidence from a physician establishing that the accepted employment incident on October 11, 2017 caused or aggravated appellant's diagnosed right lower extremity conditions, the Board finds that appellant has not met her burden of proof.

On appeal counsel argues that OWCP did not review the appellant's September 19, 2018 sworn statement in its November 8, 2019 decision. The Board notes however, that OWCP specifically referenced the statement in the discussion of evidence. Counsel further argues that OWCP failed to include appellant's rolling of her ankle on October 11, 2017 as an accepted incident. The record, however, established that the only alleged injury on the Form CA-1 was the rolling of her pant legs up to cool down from extreme heat and humidity. As explained above, the evidence of record is insufficient to establish causal relationship. Therefore, the appellant has not met her burden of proof.

[15] *See K.W.*, Docket No. 19-1906 (issued April 1, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[16] *C.L.*, Docket No. 18-1323 (issued January 3, 2019); *S.Y.*, Docket No. 11-1816 (issued March 16, 2012).

[17] *J.K.*, Docket No. 20-0590 (issued July 17, 2020).

[18] *See D.A.*, Docket No. 20-0951 (issued November 6, 2020); *G.M.*, Docket No. 15-1288 (issued September 18, 2015).

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 that her right lower extremity conditions were causally related to the accepted October 11, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 8, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board