

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.

FACTUAL HISTORY

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

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 "swollen and achy" left ankle due to factors of her federal employment. She indicated that she sought medical attention on August 15, 2016. Appellant noted that she first became aware of her claimed condition and realized its relationship to her federal employment on August 10, 2016. She stopped work on August 15, 2016 and returned to work on August 16, 2016.⁴ OWCP assigned the claim OWCP File No. xxxxxx849.

By decision dated November 2, 2016, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish her alleged factors of federal employment. (RD 11/2/16)

David Yeager, a podiatrist, completed a duty status report (Form CA-17) on December 28, 2016 noting the date of injury as August 10, 2016 and appellant's history of left ankle stabilization. He described clinical findings of past left ankle lateral stabilization. Dr. Yeager indicated that on January 23, 2017 appellant had been advised to resume work with restrictions. He also indicated that she was transitioning from a controlled ankle motion (CAM) boot. In discharge instructions dated January 18, 2017, he 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 from 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 indicated that appellant was doing fine status post lateral ankle stabilization with medial ankle stabilization of the peroneus brevis tendon and delayed primary repair of a ruptured anterior talofibular ligament, and ankle

³ Docket No. 19-0041 (issued May 2, 2019).

⁴ On August 15, 2016 appellant accepted the employing establishment's offer of a full-time, light-duty position, effective that day.

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

arthrotomy. Dr. Yeager advised that a note was given for her to remain off work. In a February 13, 2017 Form CA-17, he restated the findings and statements set forth in his December 28, 2016 report.

In a March 9, 2017 decision, 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 the accepted factors of her federal employment.

OWCP received additional Form CA-17 reports dated April 18, May 24, June 27, and September 25, 2017 by Dr. Yeager, who reiterated his prior findings and statements set forth in his December 28, 2016 Form CA-17 report with the exception that, in his June 27 and September 25, 2017 Form CA-17 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 per 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 additional medical evidence, which included reports from Dr. Yeager, which addressed her left ankle conditions, work capacity, and medical treatment. In a July 25, 2017 letter, he related a history that appellant sustained a left ankle injury due to the dog jumping incident that occurred on November 13, 2015. Dr. Yeager noted that she was diagnosed as having a severe sprained ankle. Appellant was off work for approximately 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. Michael D. Williams, an attending podiatrist, referred appellant to him for surgical consultation and evaluation. Dr. Yeager maintained that she was progressing nicely. He related, however, that appellant had not yet reached maximum medical improvement but believed that she would be in one month. In an October 19, 2016 operative report, he provided a preoperative and postoperative diagnosis of chronic left ankle lateral ankle instability. Dr. Yeager performed 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. In an office note dated October 28, 2016, he reexamined appellant, reviewed diagnostic test results, and noted that she was doing fine one week after her October 19, 2016 surgery.

Appellant responded to OWCP's August 31, 2016 development questionnaire in a statement dated April 3, 2018. She attributed her claimed condition/injury to her work duties that included walking/delivering mail to each box along a designated route on different surfaces and under different hazards on a daily basis. Appellant contended 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. She related that daily hazards and factors included animals, which may be unexpectedly outside or natural hazards such as, rocks, sticks and holes. Appellant worked 8 to 10 hours a day. She 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 and did not participate in any sports.

By decision dated May 14, 2018, OWCP denied modification of its March 9, 2017 decision.

On October 8, 2018 appellant, through counsel, appealed to the Board. By decision dated May 2, 2019, the Board affirmed OWCP's May 14, 2018 decision.⁶

On January 22, 2020 appellant, through counsel, requested reconsideration.

In support of her claim, appellant submitted a letter from Dr. Yeager dated December 10, 2019. Dr. Yeager noted that appellant's left ankle had gone through a significant amount of problems including arthritic changes. He maintained that, given the nature of her injuries, the instability of the ankle, and her overall work environment of uneven surfaces and at times quick motions, the ankle had been subjected to unstable employment factors. Dr. Yeager also maintained that appellant had multiple problems by returning to work too soon. He indicated that she sustained multiple sprains at work and had ligamentous laxity. Dr. Yeager noted that multiple x-ray analysis indicated ankle stability with significant talar tilt. He further noted that appellant had been seen by multiple physicians in the past and had an unstable ankle on physical examination. Dr. Yeager related that he firmly believed, due to a reasonable degree of medical certainty, that her left ankle problems were directly related to her occupation. He contended that the forces in a downward inversion-type injury subsequently set up appellant for future problems where surgical intervention was beneficial, but returning to work brought her back to the same similar condition.

Appellant also resubmitted Dr. Yeager's July 25, 2017 letter.

By decision dated April 13, 2020, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ 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; that an injury was sustained while 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

⁶ *Supra* note 3.

⁷ *Supra* note 2.

employment injury.⁸ 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.⁹

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;¹⁰ (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;¹¹ and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹²

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.¹³

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.

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's May 14, 2018 decision. The Board considered that evidence in its May 2, 2019 decision and found it insufficient to establish a left ankle condition causally related to the accepted factors of her federal employment.¹⁴ Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹⁵

On January 22, 2020 appellant, through counsel, requested reconsideration and submitted a December 10, 2019 letter from Dr. Yeager. Dr. Yeager noted that she had an unstable left ankle based on multiple sprains at work, multiple x-ray analysis which indicated ankle stability with significant talar tilt, suffering from ligamentous laxity, and the finding of an unstable ankle on physical examination by multiple prior physicians. He noted that he firmly believed that

⁸ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

¹¹ *Michael R. Shaffer*, 55 ECAB 386 (2004).

¹² *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹³ *See J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

¹⁴ *A.L.*, Docket No. 18-1016 (issued March 6, 2020); *C.T.*, Docket No. 19-0508 (issued September 5, 2019).

¹⁵ *See N.M.*, Docket No. 19-0258 (issued May 8, 2020); *A.L., id.*; *T.H.*, Docket No. 18-1585 (issued March 22, 2019).

appellant's left ankle problems were directly related to her unstable employment factors, which involved working on uneven surfaces and performing quick motions. While he generally supported causal relationship, his opinion was insufficiently rationalized. The Board has previously held that mere conclusory statements, not fortified by explanation, are insufficient to establish causal relationship between employment factors and diagnosed conditions.¹⁶ Without further explanation as to how, physiologically, the movements involved in appellant's employment duties caused or contributed to the diagnosed left ankle conditions, his opinion on causal relationship is of limited probative value.¹⁷ A rationalized medical opinion is especially necessary in light of appellant's preexisting left ankle conditions.¹⁸ As such, Dr. Yeager's report is insufficient to establish the claim.¹⁹

As appellant has not submitted rationalized medical evidence to establish an injury causally related to the accepted employment factors, she has not met her 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 her burden of proof to establish a left ankle condition causally related to the accepted factors of her federal employment.

¹⁶ A.W., Docket No. 19-1277 (issued January 3, 2020); V.S., Docket No. 19-0936 (issued October 7, 2019); M.S., Docket No. 19-0587 (issued July 22, 2019); B.C., Docket No. 18-1735 (issued April 23, 2019); N.M., Docket No. 10-0283 (issued August 19, 2010).

¹⁷ *Id.*

¹⁸ A.W., *supra* note 16; J.H., Docket No. 19-0838 (issued October 1, 2019); D.M., Docket No. 19-0389 (issued July 16, 2019).

¹⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board