

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

S.T., Appellant	)	
	)	
and	)	Docket No. 24-0571
	)	Issued: June 14, 2024
U.S. POSTAL SERVICE, BAYCHESTER POST	)	
OFFICE, Bronx, NY, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On May 7, 2024 appellant, through counsel, filed a timely appeal from an April 9, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether OWCP properly denied authorization of appellant's left ankle arthroscopic surgical procedure, performed on April 1, 2022.

## FACTUAL HISTORY

On June 24, 2020 appellant, then a 30-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 18, 2020 she twisted her left ankle when she missed a step while descending stairs in the performance of duty.<sup>3</sup> She stopped work on June 18, 2020. By decision dated July 22, 2020, OWCP accepted the claim for left ankle talofibular ligament sprain.

An August 26, 2020 magnetic resonance imaging (MRI) scan of appellant's left ankle reported no significant changes from a December 20, 2018 MRI scan and persistent left ankle Achilles tendinopathy.

On September 10, 2020 Dr. James McWilliam, a Board-certified orthopedic surgeon, noted that appellant was seen on September 4, 2020 for review of her left ankle MRI scan, which demonstrated Achilles tendinitis, peroneal tendons fluid, and tibiotalar and posterior subtalar joint effusion. He recommended ankle arthroscopy with debridement of presumed anterolateral impingement lesion and peroneal tendon diascopy with repair or debridement.

In a report dated February 17, 2022, Siddhartha Sharma, a podiatrist, noted appellant was seen for left ankle pain. He recounted that appellant had been in her usual health until sustaining a June 18, 2020 work-related trip and fall. Dr. Sharma diagnosed left ankle internal derangement, left ankle joint effusion, and left ankle rule out collateral ligament tears. He requested that an MRI scan be performed. The March 2, 2022 left ankle MRI scan demonstrated prior syndesmotic and anterior talofibular ligament (ATFL) repairs, partial deltoid ligament tear, mild retrocalcaneal bursitis, Achilles tendinosis, and posterior calcaneal enthesophyte and joint effusion.

An April 1, 2022 operative report, related that Dr. Sharma performed left ankle arthroscopy with extensive debridement, repair of left ankle collateral ligaments via modified brostrom, left ankle tenolysis of Achilles tendon, and left ankle harvesting and grafting of autologous soft tissue to collateral ligaments.

On September 6, 2022 OWCP referred appellant, along with the medical record, a series of questions, and a statement of accepted facts (SOAF) to Dr. Jonathan Paul, a Board-certified orthopedic surgeon serving as OWCP's second opinion physician, to determine whether appellant's claim should be expanded to include additional conditions, whether she had current

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<sup>3</sup> On March 12, 2020 appellant filed a traumatic injury claim (Form CA-1) alleging that she injured her left ankle while walking to deliver mail in the dark. OWCP assigned that claim OWCP File No. xxxxxx766, which was not formally adjudicated and administratively closed based on the minor nature of the reported injury. On April 14, 2021, OWCP administratively combined OWCP File Nos. xxxxxx766 and xxxxxx940, with the latter designated as the master file.

disability or residuals due to her accepted condition, and whether the April 1, 2022 surgery was medically necessary to treat her accepted work-related injury.

In a report dated October 17, 2022, Dr. Paul reviewed the SOAF and the medical record, noting that appellant had been involved in a motor vehicle accident on February 6, 2022 and had not worked since that date. He also noted that appellant related that the February 20, 2020 incident concerned her right, not left ankle. Dr. Paul reported his examination findings and opined that her accepted left ankle condition had resolved. He also related that the conditions diagnosed by her physician of traumatic left ankle arthropathy, bilateral ankle peroneal tendinitis, and left ankle anterolateral impingement were not found on examination. Dr. Paul related that he did find mild left ankle Achilles tendinitis on examination, which had improved following surgery. He opined that appellant's claim should not be expanded to include any of the additional conditions as they were preexisting and were unrelated to either the February 20 or June 18, 2020 employment injuries. With respect to authorization for surgery for left lower leg tendon release and left ankle arthroscopy, Dr. Paul opined that none of these procedures should be authorized because they were due to nonwork-related preexisting conditions. He explained that a 2020 magnetic resonance imaging (MRI) scan reported no significant change from a December 20, 2018 MRI scan.

By decision dated January 19, 2023, OWCP terminated appellant's entitlement to wage-loss compensation and medical benefits, effective that date. In a separate decision of even date, it denied appellant's request for expansion of her claim to include osteochondritis dissecans of lateral right ankle talus, left ankle traumatic arthropathy, bilateral ankle peroneal tendinitis, left ankle Achilles tendinitis, and left ankle anterolateral impingement. OWCP also denied appellant's requested surgical procedures as the procedures were not necessary for treatment of appellant's accepted employment-related condition.

On January 24, 2023 appellant, through counsel, requested a telephonic hearing on both decisions. By decision dated September 27, 2023, OWCP's hearing representative affirmed the termination of benefits and the denial of expansion of her claim to include additional ankle conditions. The hearing representative remanded the case to address whether the April 1, 2022 surgery was necessary and causally related to the accepted employment injury.

On October 11, 2023 OWCP requested that Dr. Paul provide an addendum addressing whether appellant's left ankle surgery was necessary and causally related to her February 20 and June 18, 2020 work injuries.

In an addendum dated November 7, 2023, Dr. Paul explained that an August 26, 2020 MRI scan showed no significant changes from the December 2018 MRI scan. He opined that the April 1, 2022 surgery was not causally related or necessary for her February 20 and June 18, 2020 work injuries. In support of his conclusion, Dr. Paul explained that both the December 2018 and August 26, 2020 MRI scans showed the exact same results. As the December 2018 MRI scan was performed for ankle instability, appellant did have a history of left ankle instability.

By decision dated December 4, 2023, OWCP denied authorization for appellant's left ankle arthroscopic surgery. It explained that the evidence did not support that the surgical procedure was medically necessary to address the effects of her work-related condition.

On December 12, 2023 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on March 7, 2024.

By decision dated April 9, 2024, OWCP's hearing representative affirmed the December 4, 2023 decision. He found that OWCP properly denied authorization of appellant's left ankle surgical procedure, which was performed on April 1, 2022.

### **LEGAL PRECEDENT**

Section 8103(a) of FECA<sup>4</sup> provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed by or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.<sup>5</sup> In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in determining whether a particular type of treatment is likely to cure or give relief.<sup>6</sup> The only limitation on OWCP's authority is that of reasonableness.<sup>7</sup>

While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of proof to establish that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.<sup>8</sup> Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.<sup>9</sup> In order for a surgical procedure to be authorized, appellant must establish that the procedure was for a condition causally related to the employment injury and that the procedure was medically warranted.<sup>10</sup> Both of these criteria must be met in order for OWCP to authorize payment.<sup>11</sup>

Abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from

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<sup>4</sup> 5 U.S.C. § 8103(a).

<sup>5</sup> *Id.*; see *C.L.*, Docket No. 24-0249 (issued April 15, 2024); *J.K.*, Docket No. 20-1313 (issued May 17, 2021); *Thomas W. Stevens*, 50 ECAB 288 (1999).

<sup>6</sup> *C.L., id.*; *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *W.T.*, Docket No. 08-812 (issued April 3, 2009).

<sup>7</sup> *C.L., id.*; *D.C.*, Docket No. 18-0080 (issued May 22, 2018); *Mira R. Adams*, 48 ECAB 504 (1997).

<sup>8</sup> *C.L., id.*; *R.M.*, Docket No. 19-1319 (issued December 10, 2019); *J.T.*, Docket No. 18-0503 (issued October 16, 2018); *Debra S. King*, 44 ECAB 203, 209 (1992).

<sup>9</sup> *C.L., id.*; *K.W.*, Docket No. 18-1523 (issued May 22, 2019); *C.L.*, Docket No. 17-0230 (issued April 24, 2018); *M.B.*, 58 ECAB 588 (2007); *Bertha L. Arnold*, 38 ECAB 282 (1986).

<sup>10</sup> *C.L., id.*; *T.A.*, Docket No. 19-1030 (issued November 22, 2019); *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

<sup>11</sup> *C.L., id.*; *J.L.*, Docket No. 18-0990 (issued March 5, 2019); *R.C.*, 58 ECAB 238 (2006); *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>12</sup>

### ANALYSIS

The Board finds that OWCP properly denied authorization of appellant's left ankle arthroscopic surgical procedure, performed on April 1, 2022.

While appellant's treating physician, Dr. McWilliam, in his report dated September 10, 2020 recommended appellant's left ankle arthroscopic procedure, and Dr. Sharma performed appellant's left ankle arthroscopy on April 1, 2022, neither treating physician provided a well-rationalized opinion that the procedure was medically necessary for treatment of appellant's accepted left ankle condition.<sup>13</sup>

In an October 17, 2022 report, Dr. Paul, an OWCP second opinion physician, reviewed appellant's medical records and a SOAF. He noted his examination of appellant's left ankle, discussed appellant's history of injury, reviewed medical evidence, and the claim had been accepted for left ankle talofibular ligament sprain. Dr. Paul opined that the accepted condition had resolved without residuals or disability. He noted that appellant's physician had also diagnosed traumatic left ankle arthropathy, bilateral ankle peroneal tendinitis, left ankle anterolateral impingement, mild left ankle Achilles tendinitis, which he opined were not employment related. Dr. Paul opined that appellant's April 1, 2022 left ankle surgery was not medically necessary to treat her accepted work-related condition but was due to her preexisting left ankle instability. In a November addendum, he reiterated that the April 1, 2022 left ankle surgery was not necessary for her February 20 or June 18, 2020 work injuries. In support of this conclusion, Dr. Paul explained that the MRI scan performed after her injury and the one performed before her injury showed the exact same findings.

The Board finds that Dr. Paul provided a well-rationalized opinion that appellant's left ankle arthroscopic surgery was not medically warranted for the accepted condition. Dr. Paul's opinion was based on a complete factual background, SOAF, and a review of the medical record, and physical examination findings. As such, his opinion represents the weight of the evidence.

The only limitation on OWCP's authority in approving or disapproving service under FECA is one of reasonableness.<sup>14</sup> In the instant case, OWCP obtained a well-rationalized report from Dr. Paul in which he opined that the requested surgery was not warranted for appellant's accepted employment-related left ankle condition. It, therefore, did not abuse its discretion.

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<sup>12</sup> *C.L., id.*; *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *E.L.*, Docket No. 17-1445 (issued December 18, 2018); *L.W.*, 59 ECAB 471 (2008); *P.P.*, 58 ECAB 673 (2007); *Daniel J. Perea*, 42 ECAB 214 (1990).

<sup>13</sup> *See V.S.*, Docket No. 17-0854 (issued December 6, 2017).

<sup>14</sup> *H.E.*, Docket No. 23-0629 (issued April 4, 2024); *D.C.*, 58 ECAB 629 (2007); *Mira R. Adams, supra* note 7.

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 OWCP properly denied authorization for appellant's April 1, 2022 left ankle arthroscopic surgical procedure.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 9, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board