

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

_____)	
H.K., Appellant)	
)	
and)	Docket No. 24-0020
)	Issued: October 24, 2024
U.S. POSTAL SERVICE, HONOLULU POST OFFICE, Honolulu, HI, Employer)	
_____)	

Appearances:
Michael J. Watson, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 9, 2023 appellant, through her representative , filed a timely appeal from a September 26, 2023 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 a medical condition causally related to the accepted August 20, 2022 employment incident.

FACTUAL HISTORY

On August 30, 2022 appellant, then a 28-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on August 20, 2022 she sustained an injury to her left foot after a coworker threw an oversized parcel that fell off a belt and onto her foot while in the performance of duty. She stopped work on August 22, 2022.

Appellant was treated in the emergency room on August 28, 2022, and diagnosed with contusion of the left foot. A medical provider opined that appellant was totally disabled from work during the period August 28 through September 3, 2022.

In a development letter dated September 1, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish the claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On September 13, 2022 Dr. Kevin K. Lum, Board-certified in emergency medicine, treated appellant for left foot pain. Appellant reported that on August 20, 2022 a coworker accidentally dropped a box onto her left foot. She continued to work and sought medical attention on August 28, 2022. Dr. Lum noted that x-rays did not reveal an acute fracture but an old fracture with incomplete healing. He noted findings of swelling of the left forefoot, no ecchymosis and tenderness to the second through fourth metatarsals. Dr. Lum diagnosed contusion of the left foot and provided a cast shoe. In a work status report of the same date, he returned appellant to modified duty.

By decision dated October 12, 2022, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as she described. It noted that she had neither responded to its September 1, 2022 development questionnaire, nor provided information clarifying the alleged August 20, 2022 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received additional evidence. On August 30, 2022 A.R., a coworker, indicated that on August 19 or 20, 2022, while working with appellant, a freight worker threw a parcel onto the belt that fell onto appellant's left foot. In a statement dated December 19, 2022, D.K., a coworker noted that on August 21 and 22, 2022 he witnessed appellant limping early in the shift, which continued throughout the day. On August 22, 2022 appellant informed him that, on the prior day, a freight worker threw a box that fell off a belt onto her foot. D.K. noted appellant's foot was purple and swollen.

In a report dated September 6, 2022, Dr. Lum treated appellant for left foot pain that began on August 20, 2022 while at work when a coworker accidentally dropped a box onto her left foot.

A magnetic resonance imaging (MRI) scan of the left forefoot dated October 3, 2022 revealed a healing fracture within the proximal fourth metatarsal shaft without displacement, nondisplaced fracture at the base of the fifth metatarsal of indeterminate age, subchondral fracture at the first metatarsal base, first intermetatarsal webspace bursitis, forefoot atrophy, and bipartite fibular hallux sesamoiditis.

In reports dated October 13, 27, November 15, 29, and December 13, 2022, Dr. Lum diagnosed contusion of the left foot and closed nondisplaced fracture of the fourth metatarsal bone of the left foot with routine healing. He provided a cast shoe and returned appellant to modified-duty work.

In work status reports dated October 13 and 27, 2022, Dr. Lum returned appellant to work with restrictions and a left splint/cast shoe.

On November 14, 2022 Dr. Gary Okamura, a Board-certified orthopedist, treated appellant for a left foot injury that occurred at work on August 20, 2022. Appellant reported that a box was thrown onto a belt and landed on her left foot and toes. Physical examination revealed swelling of the left forefoot and midfoot, limited range of motion of the left foot, diffusely weak strength of the foot muscles, and diffuse tenderness involving the forefoot and at the base of the metatarsals. Dr. Okamura diagnosed nondisplaced fracture of the fourth metatarsal bone, fracture with routine healing, and contusion of the left foot. He recommended physical therapy and a walking boot.

In a form report dated November 23, 2022, Dr. Albert S. Yeung, a Board-certified radiologist, indicated that appellant sustained a left foot injury on August 20, 2022 and was treated by Dr. Lum.

A December 13, 2022 x-ray of the left foot revealed a subacute transverse fracture through the base of the fourth metatarsal with periosteal reaction and residual lucency of the fracture line.

In a statement dated December 16, 2022, appellant indicated that on August 20, 2022 she was working in the air cargo area and an airline contractor threw a box containing a bedframe that landed on her left foot. She indicated that she continued to work in pain and on August 28, 2022 sought medical treatment. Appellant was diagnosed with a left foot contusion and provided a boot. She noted that she did not have any prior foot injuries.

Dr. Lum continued to treat appellant through December 27, 2022 for a left foot injury that occurred on August 20, 2022 while at work. He diagnosed contusion of the left foot and closed nondisplaced fracture of the fourth metatarsal bone of the left foot with routine healing. In a statement addressing causation, Dr. Lum noted that on August 20, 2022, while performing her regular work duties, appellant moved a large box that accidentally fell on her left foot. He opined within a reasonable amount of certainty that the large box falling onto her foot caused the fractures seen on the MRI scan of the left foot. Dr. Lum stated that it was reasonable to conclude that the location and the nondisplaced nature of the fracture made it difficult to detect it on plain x-rays initially performed. He advised that the initial diagnosis of foot contusion did not reflect the fractures of the fourth and first metatarsal she sustained from the box due to the limitations of x-rays. Dr. Lum indicated that it was reasonable to conclude that the fracture of the metatarsals

led to the continued swelling, pain, and dysfunction of her foot, which prevented her from being able to perform her duties at work.

In a form report dated May 3, 2023, Dr. Yeung indicated that appellant sustained a left foot injury on August 20, 2022 and was treated by Dr. Lum.

By decision dated June 5, 2023, OWCP modified its prior decision, finding that appellant had established that the August 20, 2022 employment incident occurred, as alleged. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between a diagnosed condition and the accepted August 20, 2022 employment incident.

On September 23, 2023 appellant requested reconsideration and submitted additional evidence. In a report dated January 4, 2022, Dr. Joshua Evans, a Board-certified family practitioner, diagnosed tendinitis of the left peroneus longus tendon, and obesity. He recommended an ankle brace and weight loss. On January 27, 2022 Dr. Evans related that appellant sustained an injury to her left peroneal tendon on December 14, 2021, which resulted in peroneal tendinitis. Appellant's condition improved, but she was advised to avoid heavy lifting to prevent further injury to the peroneal tendon. Dr. Evans returned appellant to full duty on January 29, 2022.

In a statement dated July 31, 2023, appellant indicated that prior to the August 20, 2022 injury she was off work from December 14, 2021 through January 29, 2022 due to a left peroneal tendon injury, which resulted in peroneal tendinitis.

By decision dated September 26, 2023, OWCP denied modification of the June 5, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including 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 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

³ *Id.*

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *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).

⁶ *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).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.⁷

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employment incident identified by the employee.⁹

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a contusion of the left foot causally related to the accepted August 20, 2022 employment incident.

OWCP found that the August 20, 2022 employment incident occurred as alleged. In an August 28, 2022 emergency room note, a medical provider observed a contusion of the left foot from the accepted employment incident. OWCP's procedures provide that, if a condition reported is a minor one, such as a burn, laceration, insect sting, or animal bite, which can be identified on visual inspection by a lay person, a case may be accepted without a medical report.¹⁰ As the evidence of record establishes a visible injury, the Board finds that appellant has met her burden of proof to establish a left foot contusion causally related to the accepted August 20, 2022 employment incident.¹¹ The case will, therefore, be remanded to OWCP for payment of medical expenses for appellant's contusion of the left foot and any attendant disability.

The Board further finds, however, that appellant has not met her burden of proof to establish additional medical conditions as causally related to the accepted August 20, 2022 employment injury.

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *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).

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6a (June 2011); *id.* at Chapter 2.805.3c (May 2023). See also *R.H.*, Docket No. 20-1684 (issued August 27, 2021); *A.J.*, Docket No. 20-0484 (issued September 2, 2020).

¹¹ See *R.H.*, *id.*; *A.J.*, *id.*; see also *W.R.*, Docket No. 20-1101 (issued January 26, 2021); *S.K.*, Docket No. 18-1411 (issued July 22, 2020).

Appellant submitted a report dated December 27, 2022, by Dr. Lum, who diagnosed contusion of the left foot and closed nondisplaced fracture of the fourth metatarsal bone of the left foot. Dr. Lum opined within a reasonable amount of certainty that the large box falling on to appellant's foot caused the fractures seen on the MRI scan of the left foot. He advised that although the initial diagnosis of foot contusion did not reflect the fractures of the fourth and first metatarsal, she sustained from the box due to the limitation of x-rays, it was reasonable to conclude that the fracture of the metatarsals led to the continued swelling, pain, and dysfunction of her foot, which prevented her from being able to perform her duties at work. However, Dr. Lum did not provide adequate medical rationale in support of his opinion on causal relationship. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was causally related to the accepted employment injury.¹² This report is, therefore, insufficient to establish appellant's claim.

Appellant submitted reports dated September 6 and 13, October 13 and 27, November 15 and 29, and December 13, 2022, wherein Dr. Lum noted treatment and provided diagnoses. Similarly, in form reports dated November 23, 2022 and May 3, 2023, Dr. Yeung noted that appellant sustained a left foot injury on August 20, 2022. On November 14, 2022 Dr. Okamura treated appellant for a left foot injury that occurred at work on August 20, 2022 and provided diagnoses. The reports of Drs. Lum, Yeung and Okamura, however, did not address causal relationship. The Board has held that medical evidence that does not include an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹³ These reports are, therefore, insufficient to establish appellant's claim.

The Board notes that the reports from Dr. Evans dated January 4 and 27, 2022 are not relevant to the current claim as they predate the claimed August 20, 2022 employment injury.¹⁴

The remaining evidence of record consists of reports of diagnostic studies. The Board has held that diagnostic studies, standing alone, lack probative value, and are insufficient to establish the claim.¹⁵ Therefore, these reports are also insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish additional medical conditions as causally related to the accepted August 20, 2022 employment injury, the Board finds that appellant has not met her burden of proof.

¹² See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition).

¹³ See *R.J.*, Docket No. 24-0885 (issued September 30, 2024); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ See generally, *B.P.*, Docket No. 21-0872 (issued December 8, 2021); *D.A.*, Docket No. 21-0939 (issued November 22, 2021).

¹⁵ *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

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 met her burden of proof to establish a left foot contusion causally related to the accepted August 20, 2022 employment incident. The Board further finds, however, that she has not met her burden of proof to establish additional medical conditions as causally related to the accepted August 20, 2022 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2023 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part.

Issued: October 24, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board