

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

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**J.M., Appellant** )

**and** )

**U.S. POSTAL SERVICE, POST OFFICE,** )  
**Grayville, IL, Employer** )  
\_\_\_\_\_ )

**Docket No. 22-0916**  
**Issued: September 30, 2024**

*Appearances:*

*Alan J. Shapiro, for the appellant,<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On May 31, 2022 appellant filed a timely appeal from an April 14, 2022 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 appellant has met her burden of proof to establish a right ankle condition causally related to the accepted August 29, 2020 employment incident.

## FACTUAL HISTORY

On September 28, 2020 appellant, then a 55-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 29, 2020 she injured a tendon in her right ankle when she stepped in a hole walking through a yard while in the performance of duty. She stopped work on September 26, 2020.

Along with her claim, appellant submitted a September 20, 2020 patient data card with an illegible signature, diagnosing her with an ankle sprain and stating that she should remain off work until October 11, 2020.

Routing slips dated November 13, 2020 contained the written statements of appellant and her supervisor, T.H. Appellant indicated that she injured her right ankle by stepping in a hole on August 29, 2020 and listed the time and address of the injury. She further related that she did not complete an accident report or seek medical attention at the time because she did not think it would be necessary. On a separate routing slip, T.H. indicated that the accident was reported late because when appellant informed him of the injury, he told her that he needed to file an accident report, but appellant replied that she would be okay, refused to file a report, and walked away.

In a January 21, 2021 claim for compensation (Form CA-7) appellant requested wage-loss compensation for disability from work for the period January 6 through 15, 2021.

In a January 22, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a factual questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Subsequently, OWCP received a January 16, 2021 note signed by Dr. Jennifer R. Miller, a Board-certified podiatrist, diagnosing a nondisplaced distal fibular fracture and peroneal tendinitis.

In a January 25, 2021 response to OWCP's development questionnaire, appellant asserted that while walking on her route she tripped in a rut and felt a sharp pain, but continued with her duties because she was near the end of her route. She related that after the injury she experienced pain on most days and took over-the-counter pain medication until she was examined by Dr. Miller.

In a note dated January 27, 2021, Dr. Miller requested that appellant be excused from work for two weeks and noted that if she did not show improvement, she might need surgical intervention. In notes dated February 17, 2021, she recommended that appellant remain off work for two weeks, diagnosing paresthesia, and prescribing nerve conduction velocity testing as well as a controlled ankle motion (CAM) boot.

By decision dated February 23, 2021, OWCP accepted that the August 29, 2020 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between her diagnosed ankle condition and the accepted August 29, 2020 employment incident.

On February 27, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Subsequently, appellant submitted additional medical evidence, including office visit notes dated October 13, 2020 from Dr. Miller. Dr. Miller provided a history of appellant twisting her ankle when she stepped in a hole while delivering mail on August 29, 2020.<sup>3</sup> She noted that appellant continued to experience popping, snapping, and tightness in her lateral ankle and heel and subsequently underwent x-rays and received an ankle brace. Dr. Miller diagnosed peroneal tendinitis with the need to rule out a tear versus luxation, Achilles tendinitis, plantar fasciitis, and an ankle sprain. She recommended a physical therapy evaluation and advised rest, ice, compression, elevation, and wearing a brace with all activity.

Dr. Miller examined appellant on November 4, 2020 and noted that she was doing well after physical therapy, but had missed a few sessions due to working overtime. She had trouble wearing a brace with her work shoes. Dr. Miller recommended continued physical therapy, work restrictions, and continued use of a brace. She repeated the same diagnoses as in her October 13, 2020 report.

Visit notes from a December 2, 2020 encounter with Dr. Miller indicated that appellant's physical therapy for peroneal tendinitis and subluxation had improved her condition, but she continued to experience pain and stiffness.

A magnetic resonance imaging (MRI) scan report, dated December 30, 2020, revealed a small effusion and nondisplaced microfracture of the distal fibula with mild soft tissue swelling.

On January 6, 2021 Dr. Miller related appellant's complaint of ankle pain which worsened through the day. She indicated that a recent MRI scan revealed a non-displaced fibular fracture and ordered appellant to immobilize her ankle in a CAM boot with use of crutches.

On January 27, 2021 Dr. Miller examined appellant and noted that she had been wearing the CAM boot for three weeks and felt better with it. She reiterated her prior diagnoses and discussed surgical treatment with appellant.

In a March 3, 2021 report, Dr. Miller indicated that appellant presented on October 13, 2020 for injuries incurred by stepping into a hole, resulting in severe pain and swelling. She noted that x-rays from September 20, 2020 were positive for small tibiotalar joint effusion and that, upon physical examination, appellant had tenderness of the Achilles tendon, peroneal tendon course

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<sup>3</sup> This medical report noted an injury date of August 22, 2020, however Dr. Miller's June 4, 2021 report, discussed below, made clear that the date of injury was incorrectly documented on appellant's first visit as August 22, 2020. Dr. Miller explained her June 4, 2021 report that appellant later informed her that the date of injury was actually August 29, 2020 and she added a medical addendum to appellant's medical record to reflect the corrected date.

with questionable subluxation of the peroneal tendons, and pain at multiple locations. Dr. Miller explained that this was consistent with an ankle sprain, Achilles tendinitis, possible peroneal retinacular tear, and plantar fasciitis. She summarized appellant's course of treatment and noted that appellant had continued with physical therapy and underwent an MRI scan with findings consistent with peroneal tendinitis and a small, displaced fracture of the distal right fibula. At follow-up appointments, appellant continued to report pain and snapping at the lateral ankle without the boot and complained of paresthesia, and Dr. Miller explained that the above findings were consistent with a sprain injury "which could be incurred" after an inversion injury to the ankle when stepping in a hole on uneven terrain. She related that the "non-displaced small fibular fracture of the right distal fibular can be noted in grade three peroneal subluxation injuries, where the superior peroneal retinaculum can tear and avulse a fragment of the fibular bone cortex." Dr. Miller noted that appellant had failed with the modalities of bracing, physical therapy, restriction, and immobilization, and thus surgical intervention may be required before appellant could return to work.

On March 3, 2021 appellant informed OWCP that she received its denial and that she completed the development questionnaire, which was the only paperwork she received from OWCP.

In notes dated March 18, April 20, and May 5, 2021, Dr. Miller advised that appellant should continue to be excused from work.

Appellant also submitted a May 5, 2021 authorization for surgery and a surgical scheduling form, authorizing a lateral ankle stabilization and exploration of peroneal tendons with possible repairs.

An operative report dated May 28, 2021 described the right lateral ankle stabilization and tenosynovectomy of peroneal tendons, performed by Dr. Miller.

In a June 4, 2021 report, Dr. Miller explained that appellant reported a twisting injury to her right ankle on August 29, 2020<sup>4</sup> after stepping in a hole while working as a mail carrier. She opined that "this type of injury likely caused sudden dorsiflexion followed by inversion stress to the ankle, injuring the retinaculum and lateral ankle ligament complex." Dr. Miller further explained that the twisting motion to appellant's ankle and lateral ankle ligament complex caused an avulsion fracture of the distal fibula at the time of injury as well, which was observed in the MRI scan. She discussed appellant's course of treatment culminating in the need for surgical intervention after other measures did not succeed and noted that appellant was undergoing post-operative rehabilitation and may need further physical therapy and surgery.

A hearing was held on June 7, 2021.

By decision dated August 18, 2021, OWCP's hearing representative affirmed the February 23, 2021 decision, finding that the evidence of record was insufficient to establish a

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<sup>4</sup> See *id.*

causal relationship between appellant's diagnosed right ankle condition and the accepted August 29, 2020 employment incident.

Appellant, through counsel, continued to submit evidence, including a November 24, 2021 report from Dr. Miller reviewing appellant's medical course of treatment and findings on prior visits. Dr. Miller noted that appellant sustained a twisting type of injury when she stepped in a hole on the ground while delivering mail on rough, grass-filled terrain and heard a snap. She was able to walk with pain. Dr. Miller described appellant's initial evaluation and treatment, follow-up appointments including physical therapy, and discussed her review of the MRI scan and the completion of the surgical intervention. Regarding causal relationship, she explained that when appellant stepped in the hole on August 29, 2020, "this caused her foot to be forced into a dorsiflexion position relative to her proximal extremity and her continued forward progression destabilized the position of the peroneal tendons, increased tension on the superior peroneal retinaculum and likely contributed to either avulsion of the [superior peroneal retinaculum] from the insertion of the distal fibular or caused a stress reaction within the structure of the fibular." Dr. Miller further explained that this sudden misstep, causing the dorsiflexion force on the peroneal tendons, contributed to further tenosynovitis as was evident on the physical examination findings and MRI scan. She concluded that a twisting injury to the ankle as reported by appellant, if it occurred while in inversion, "would injure or cause derangement in the lateral ankle ligamentous complex."

On January 14, 2022 appellant, through counsel, requested reconsideration.

By decision dated April 14, 2022, OWCP denied modification of its August 18, 2021 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> 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,<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> *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).

<sup>7</sup> *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).

<sup>8</sup> *C.B.*, Docket No. 22-1353 (issued April 25, 2023); *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. The first component is whether the employee actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>9</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>10</sup> 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 specific employment incident identified by the claimant.<sup>11</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision.

In a November 24, 2021 report, Dr. Miller reviewed appellant's course of medical treatment and prior visits, and found that she had sustained a twisting type of injury. She explained that when appellant stepped in the hole on August 29, 2020, this caused her foot to be forced into a dorsiflexion position relative to her proximal extremity "and her continued forward progression destabilized the position of the peroneal tendons, increased tension on the superior peroneal retinaculum and likely contributed to either avulsion of the [superior peroneal retinaculum] from the insertion of the distal fibular or caused a stress reaction within the structure of the fibular." Dr. Miller further opined that appellant's sudden misstep, causing the dorsiflexion force on the peroneal tendons, contributed to further tenosynovitis as was evident on the physical examination findings and MRI scan. She also concluded that a twisting injury to the ankle as reported by appellant that occurred while in inversion would cause injury or derangement of the lateral ankle ligamentous complex.

The Board notes that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence and has an obligation to see that justice is done.<sup>12</sup>

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<sup>9</sup> *J.J.*, Docket No. 22-0957 (issued March 29, 2023); *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

<sup>10</sup> *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).

<sup>11</sup> *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>12</sup> *H.M.*, Docket No. 22-0097 (issued October 11, 2022); *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

The Board finds that, while Dr. Miller’s report is insufficient to meet appellant’s burden of proof to establish her claim, it is sufficient to require further development of the medical evidence.<sup>13</sup>

The Board shall therefore remand the case to OWCP for further development of the medical evidence. On remand, OWCP shall refer appellant, along with a statement of accepted facts and the medical evidence of record, to a specialist in the appropriate field of medicine for a rationalized opinion on whether the diagnosed conditions are causally related to the accepted employment incident. If the referral physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale why their opinion differs from that of Dr. Miller. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

**CONCLUSION**

The Board finds that this case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 14, 2022 decision of the Office of Workers’ Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 30, 2024  
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

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<sup>13</sup> *Id.*