

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

A.D., Appellant	)	
	)	
and	)	Docket No. 23-0987
	)	Issued: September 30, 2024
U.S. POSTAL SERVICE, WEST ALLIS POST OFFICE, Milwaukee, WI, 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:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On July 17, 2023 appellant, through counsel, filed a timely appeal from a June 21, 2023 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 medical condition causally related to the accepted March 25, 2019 employment incident.

## FACTUAL HISTORY

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

On March 28, 2019 appellant, then a 32-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on March 25, 2019 she sprained her left lower leg when walking on an uneven surface while in the performance of duty. She stopped work on March 29, 2019. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty.

On April 17 and May 16, 2019 Dr. Robert A. Rawski, a podiatrist, treated appellant for a lower extremity fracture. An April 17, 2019 x-ray of the left foot revealed a healing stress fracture at the distal diaphysis of the fourth metatarsal. Dr. Rawski treated appellant in follow up on June 13, 2019, and noted that x-rays obtained on April 17, 2019 revealed a stress fracture of the fourth metatarsal of the left foot. He reviewed the x-ray obtained on March 28, 2019, and noted a very subtle irregularity in the same area where the stress fracture was confirmed by x-ray on April 17, 2019. Dr. Rawski opined that the stress fracture was missed by the radiologist who read the images on March 28, 2019. Appellant reported sustaining an injury at work on March 25, 2019 that involved tripping and a sudden irregular movement about the foot, which commonly cause fractures, dislocations, or soft tissue trauma. Dr. Rawski opined that the tripping injury at work on March 25, 2019 lead to the stress fracture of the fourth metatarsal left foot. He further opined that there was a causal relationship between the medical diagnosis and the injury at work. Dr. Rawski indicated that appellant sustained an injury on March 25, 2019 and x-rays were obtained on March 28, 2019 that showed a subtle osseous change to the fourth metatarsal of the left foot, and noted that she continued to experience pain in the area and sought treatment from a foot and ankle specialist who obtained new x-rays that clearly illustrated a stress fracture in the area of pain. An x-ray of the same date revealed smooth periosteal reaction without residual fracture line involving the fourth metatarsal diaphysis similar to prior study.

By decision dated July 8, 2019, 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 described. It noted that she had not provided the exact location of the injury or the time of the injury. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

In a report dated April 17, 2019, Dr. Rawski diagnosed injury of left foot initial encounter, left foot pain, left bunion, stress fracture of metatarsal bone of the left foot, and swelling of the left foot. On May 16 and June 13, 2019 he noted that an independent review and interpretation of the

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<sup>3</sup> Docket No. 21-0510 (issued September 29, 2022).

x-rays was obtained and confirmed a stress fracture of fourth metatarsal, bony callus. Dr. Rawski diagnosed stress fracture of metatarsal bone of the left foot, left foot pain, swelling of left foot, and left bunion.

On July 17, 2019 appellant through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on November 12, 2019.

On August 27 and September 25, 2019 Dr. Rawski related that appellant sustained another left foot injury at work on August 12, 2019 when she was hit by a hand pallet jack on the top of her foot. He advised that she was still healing from stress fracture from the fourth metatarsal, and recommended use of the controlled ankle movement (CAM) boot.

By decision dated January 17, 2020, OWCP modified the July 8, 2019 decision to find that appellant had established that the March 25, 2019 employment incident occurred as alleged; however, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between her diagnosed condition and the accepted employment incident.

On September 4, 2020 appellant, through counsel, requested reconsideration.

In support thereof, appellant submitted a September 1, 2020 report from Dr. Rawski who ordered x-rays during that visit, which revealed a stress fracture of the fourth metatarsal, which he opined was likely missed by the radiologist on the original films of March 28, 2019. Dr. Rawski described the mechanism of injury as stepping on uneven ground causing an inverted foot. He explained that the body's physiologic response was likely to aggressively evert the foot to bring it back to neutral, which likely caused an imbalance to the muscle/tendon/ligament tension relationship. Dr. Rawski opined that the imbalance was too much for the fourth metatarsal to handle causing a fracture.

By decision dated December 3, 2020, OWCP denied modification of the January 17, 2020 decision.

On December 29, 2020 appellant requested reconsideration.

Appellant submitted a November 12, 2020 report from Dr. Rawski who reported treating her on October 15, 2020 and opined that she may have developed peroneal tendinitis and sinus tarsi syndrome from favoring the foot secondary to pain from the injury.

By decision dated February 3, 2021, OWCP denied modification of the December 3, 2020 decision.

On February 17, 2021 appellant appealed to the Board. By decision dated September 29, 2022, the Board affirmed the February 3, 2021 OWCP decision.<sup>4</sup>

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<sup>4</sup> *Id.*

Upon return of the case record, OWCP administratively combined OWCP File Nos. xxxxxx993 and xxxxxx713 with the latter designated as the master file.

On June 7, 2023 appellant through counsel requested reconsideration.

Appellant submitted a February 7, 2023 report from Dr. Rawski who noted initially treating appellant on April 17, 2019 secondary to a left foot injury sustained on March 25, 2019. He indicated that x-rays of the left foot were obtained on March 28, 2019 and read by the radiologist as negative for fracture. Dr. Rawski advised that he ordered x-rays during his initial visit, which revealed a stress fracture of the fourth metatarsal that was missed by the radiologist from the original films on March 28, 2019. He noted the mechanism of injury described by appellant as stepping on uneven ground, which caused the foot to twist and rotate inward. Dr. Rawski explained that the inversion injury caused the foot to respond with an aggressive eversion to bring it back into a neutral position, which caused an imbalance in the muscles, tendons, and ligaments of the foot, and the stress applied exceeded the load capability of the metatarsal and caused a fracture.

By decision dated June 21, 2023, OWCP denied modification of the September 29, 2022 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>

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. 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.<sup>9</sup>

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<sup>5</sup> *Id.*

<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> *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).

<sup>9</sup> *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

The medical evidence required to establish causal relationship 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 specific employment incident identified by the employee.<sup>11</sup>

### ANALYSIS

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

Preliminarily, the Board notes that it is unnecessary to reconsider the evidence appellant submitted prior to the issuance of OWCP's December 3, 2020 decision because the Board already considered this evidence in its September 29, 2022 decision. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under Section 8128 of FECA.<sup>12</sup>

In his February 7, 2023 report, Dr. Rawski noted that appellant sustained a stress fracture of the fourth metatarsal on March 25, 2019. He noted the mechanism of injury described by her as stepping on uneven ground, which caused her left foot to twist and rotate inward. Dr. Rawski explained that the inversion injury caused the foot to respond with an aggressive eversion to bring it back into a neutral position, which caused an imbalance in the muscles, tendons and ligaments of the foot. He further indicated that the stress applied exceeded the load capability of the metatarsal and caused a fracture. Dr. Rawski concluded that these findings were due to tripping, and a sudden irregular movement about the foot that occurred during the accepted March 25, 2019 employment incident. The Board finds that, while Dr. Rawski's opinion is insufficient to establish causal relationship, it is sufficient to require further development of the claim.<sup>13</sup>

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>14</sup> OWCP has an obligation to see that justice is done.<sup>15</sup>

On remand, OWCP shall refer appellant, the medical record and a statement of accepted facts, to a specialist in the appropriate field of medicine for a second opinion examination and

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<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> *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).

<sup>12</sup> *D.A.*, Docket No. 19-1965 (issued February 10, 2021); *G.B.*, Docket No. 19-1448 (issued August 21, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

<sup>13</sup> *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>14</sup> *See A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>15</sup> *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, *supra* note 13.

rationalized medical opinion as to whether the accepted employment incident caused or aggravated her diagnosed condition. If the second opinion physician disagrees with the opinion of Dr. Rawski, he or she must provide a fully-rationalized explanation explaining why the accepted employment incident was insufficient to have caused or aggravated his diagnosed condition of stress fracture of the fourth metatarsal. After 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 June 21, 2023 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

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