

<sup>2</sup> The Board notes that, following the October 1, 2024 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

### **FACTUAL HISTORY**

On July 8, 2024 appellant, then a 58-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a bilateral hammer toe condition causally related to factors of her federal employment, including walking and standing for eight hours per day. She noted that she first became aware of her condition on January 1, 2024 and realized its relationship to her federal employment on April 1, 2024. Appellant did not stop work.

In a development letter dated July 29, 2024, OWCP informed appellant of the deficiencies of the claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary evidence.

Appellant subsequently submitted a note dated July 25, 2024, from Dr. Justin Franson, a podiatrist, who related that appellant was seen for complaints for bilateral foot pain. On physical examination of her feet and ankles, he observed bunions and hammertoe at the second and third toes bilaterally; dorsal medial dislocation of the second toe at the second metatarsophalangeal joints with moderate tenderness to palpation to the dorsal and plantar aspects bilaterally; laxity to the plantar plate bilaterally; adducto varus contracture at the third toe with deviation at the third metatarsophalangeal joints bilaterally; and tenderness to palpation to the medial bunion deformities with laterally deviated hallux bilaterally. Dr. Franson diagnosed bilateral dislocation of the metatarsal joints, bilateral hammertoe, bilateral metatarsalgia, and bilateral hallux valgus. In an attached form report of occupational injury or illness dated July 25, 2024, he attributed appellant's diagnosed conditions to walking and standing eight hours per day, heavy pushing of equipment, and lifting of small and heavy packages. Dr. Franson provided the same diagnoses and findings on examination as in the July 25, 2024 note.

In a follow-up letter dated August 16, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the July 29, 2024 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

In an undated statement received on August 29, 2024, appellant stated that she had worked for the employing establishment for more than 20 years. Her duties included walking, standing, carrying over 30 pounds in her satchel, carrying packages, and pushing heavy equipment. Appellant noted that on or about June 4, 2023, she noticed that the second toe on each foot began to move on top of her big toes. She began to use tape and a toe separator daily, which provided some relief, but by the end of 2023 and into 2024, her second toes no longer stayed where they should and began to hurt her feet, with pain moving into her legs.

In a narrative report dated August 28, 2024, Dr. Franson noted that appellant initially presented on June 28, 2024, complaining of worsening pain at the balls of her feet, focal to the second metatarsal phalangeal joint. On examination, he found dislocating second hammertoe deformities bilaterally with pain at the second metatarsal phalangeal joint in the region of the plantar plate. Dr. Franson explained that the plantar plate is a structure that provides support to the metatarsal phalangeal joints, and that it could be torn due to chronic repetitive stress, along

with wear and tear due to abnormal stress and high levels of walking, standing, squatting, and other activities.

Dr. Franson noted that appellant's duties included prolonged standing and walking and carrying heavy loads for up to eight hours per day. He opined that this chronic, repetitive stress began to cause deterioration of the plantar plate, weakening the joint supportive structure and causing pain that began to manifest on January 1, 2024. Dr. Franson further opined that her diagnosed second hammertoe deformities with second metatarsal dislocation causing instability of the feet were directly related to duties of her federal employment. He stated that these duties had also contributed to a progressive worsening of a bunion condition due to the instability of the second metatarsophalangeal joints with progressive drifting of the hallux and compounding deformity. Dr. Franson opined that it was more likely than not that her current conditions of second hammertoes bilaterally, second metatarsal phalangeal joint dislocation with instability and deformity bilaterally, and progression of hallux abducto vallus deformity with right worse than left, were directly related to and caused by the chronic, repetitive duties of her employment.

By decision dated October 1, 2024, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between a medical condition and the accepted employment factors.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish 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 timely filed within the applicable time limitation of FECA, 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>4</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.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) rationalized medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>5</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *D.S.*, Docket No. 25-0034 (issued November 18, 2024); *C.K.*, Docket No. 19-1549 (issued June 30, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *C.M.*, Docket No. 24-0893 (issued November 15, 2024); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>6</sup> The opinion of the physician must be based on a complete factual and medical background, 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 factors.<sup>7</sup>

### ANALYSIS

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

In a report dated August 28, 2024, Dr. Franson examined appellant for complaints of bilateral foot pain. On examination, he observed dislocating second hammertoe deformities bilaterally with pain at the second metatarsal phalangeal joint in the region of the plantar plate. Dr. Franson explained that the plantar plate is a structure that provides support to the metatarsal phalangeal joints, and that it could be torn due to chronic repetitive stress, along with wear and tear due to abnormal stress and high levels of walking, standing, squatting, and other activities. He recounted that appellant's duties included prolonged standing and walking and carrying heavy loads for up to eight hours per day. Dr. Franson opined that this chronic repetitive stress began to cause deterioration of appellant's plantar plate, weakening the joint supportive structure and causing pain that began to manifest on January 1, 2024, and that her diagnosed second hammertoe deformities with second metatarsal dislocation causing instability of the feet was directly related to duties of her federal employment. He noted that these duties had also contributed to a progressive worsening of a bunion condition due to the instability of the second metatarsophalangeal joints with progressive drifting of the hallux and compounding deformity. Dr. Franson concluded that it was more likely than not that her current conditions of second hammertoes bilaterally, second metatarsal phalangeal joint dislocation with instability and deformity bilaterally, and progression of hallux abducto vallus deformity with right worse than left, were directly related to and caused by the chronic, repetitive duties of her employment.

The Board finds that the August 28, 2024 narrative report from Dr. Franson, while insufficient to establish the claim, is sufficient to require further development of the medical evidence.<sup>8</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

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<sup>6</sup> *S.R.*, Docket No. 24-0839 (issued October 30, 2024); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>7</sup> *E.J.*, Docket No. 24-0777 (issued September 12, 2024); *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

<sup>8</sup> *See R.B.*, Docket No. 20-0498 (issued August 27, 2020); *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); *William J. Cantrell*, 34 ECAB 1223 (1983).

responsibility in the development of the evidence.<sup>9</sup> OWCP has an obligation to see that justice is done.<sup>10</sup>

This case must, therefore, be remanded for further development. On remand, OWCP shall refer appellant, along with the medical record and a statement of accepted facts, to a specialist in the appropriate field of medicine for a second opinion examination and report regarding whether the accepted employment factors caused or aggravated appellant's diagnosed conditions.<sup>11</sup> If the referral physician disagrees with the opinion of Dr. Franson, he/she must provide a fully-rationalized opinion explaining why the accepted employment factors were insufficient to have caused or aggravated appellant's diagnosed conditions. 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.

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<sup>9</sup> *Id.* See also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>10</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 8.

<sup>11</sup> See *R.B.*, *supra* note 8; *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 1, 2024 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: January 22, 2025  
Washington, DC

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

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

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