United States Department of Labor
Employees' Compensation Appeals Board

S.G., Appellant	)	
and	)	**Docket No. 13-1263**
	)	**Issued: September 20, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Rockingham, NC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 30, 2013 appellant filed a timely appeal of the decision of the Office of Workers' Compensation Programs (OWCP) dated December 21, 2012 denying appellant's claim for an employment injury. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that she sustained an employment-related injury to her left foot on February 23, 2012, as alleged.

On appeal, appellant contends that nobody established that she was injured outside of work. She also made negative comments about her supervisor, contended that the employing establishment made her work against physician's orders and stated that other employees have had their claims covered.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 25, 2012 appellant, then a 36-year-old city carrier, filed a traumatic injury claim alleging that on February 23, 2012 she fractured metatarsals in her left foot while working her route. In a July 6, 2012 letter, the employing establishment controverted her claim, noting that she claimed that she hurt her foot on February 23, 2012 but did not file a claim at that time. The employing establishment also indicated that appellant and her husband owned a farm and that there was a possibility that the injury occurred there.

In a March 28, 2012 report, Dr. Harvey H. Wolf, a Board-certified internist, indicated that appellant was there for follow up on multiple arthralgias. He noted that she stated that she had broken her left foot and that Dr. A. Anthony Haro, III, her treating podiatrist, put her in a boot but that she was still delivering mail. Dr. Wolf noted that appellant had broken her foot at least one other time. He noted that he cannot explain how she broke the foot. Dr. Wolf stated: "Maybe she just overuses that foot delivering the mail. It is just so curious in a premenopausal woman." He also noted that appellant wasconsiderably overweight and that may be a part of hercurrent problem.

Appellant submitted numerous progress reports by Dr. Haro.In a March 20, 2012 report, Dr. Haro diagnosed fracture of the second metatarsal with positive signs of callus forming. He further noted that appellant reportedpain for approximately one month. Dr. Haro stated that she should use crutches with instructions for nonweight-bearing left foot with exception of heel touch for balance. In an April 18, 2012 report,hediagnosed follow up of second left metatarsal fracturewith resolution of pain and positive signs of bone consolidation. In a May 7,2012 report, Dr. Haronoted that appellant was initially diagnosedin clinic around March 20,2012 with pasthistory of approximately one month prior to that of pain for which she was doing well; however, she indicated that after increased walking over time and work for the employing establishment and walking on postop shoe there was a return of pain and swelling. He diagnosed metatarsal fracture left second with incomplete consolidation and pain with swelling inleft foot. In a May 21, 2012 note, Dr. Haro ordered limited weight-bearing as tolerated for left foot while wearing cam boot. In a June 8, 2012 report,heindicated that appellant returned for follow-up with regard to left second metatarsal fracture. Dr. Haro diagnosed status post second left metatarsal fracture with date of fracture being March 30, 2012 with positive signs of bone consolidation occurring, edema and pain with reported episodes of burning in left foot and soreness in right foot.

In a July 16, 2012 letter, the employing establishment further challenged appellant's claim, noting that her medical records indicate that she is obese and show past history of cellulitis and abscess of foot, pain and possible gout.

By decision dated August 20, 2012, OWCP denied appellant's claim as it determined that the evidence did not establish that the events occurred as alleged. It also noted that the medical evidence did not establish that she had a diagnosed medical condition causally related to the work injury or event.

On September 18, 2012 OWCP appellant requested a review of the written record.In further support of her claim, appellant submitted magazine or internet articles with regard to

employees being unable to work and an article on fractures of the first and fourth metatarsals. She also submitted a statement dated September 18, 2012 wherein she noted that, on February 23, 2012, while walking in Hamlet city, she was nearly unable to finish the walking and received help to finish the route. Appellant noted that she continually walked on her foot in pain until March 19, 2012 when she visited Dr. Haro. She stated that when x-rays were taken of her foot it was found that she had been walking on a fractured second and third metatarsal the whole time. Appellant stated that, despite the physician's note putting heron light duty for two weeks with a boot, she was not given light duty. She contended that, after being worked against physician's orders on numerous occasions, she was placed in the boot and began hurting again on May 7, 2012. Appellant statedthat she was placedon light duty again but was made to workon May 8, 2012 and that, after carrying that route, she informed management that, if they could not offer her light duty, she would be off for two weeks per her physician's note. She noted that she walked many miles with a soft cast on her foot. Appellant also resubmitted the reports of Dr. Haro that were already in the record.

By decision dated December 21, 2012, OWCP modified the August 20, 2012 decision to find that there was evidence to support incident but that the evidence was insufficient to support causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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 period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.[2]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.[3] In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place and in the manner alleged.[4]

[2] *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

[3] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[4] *Linda S. Jackson*, 49 ECAB 486 (1998).

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[5] The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 identified by the claimant.[6]

ANALYSIS

OWCP accepted that appellant established that the employment incident occurred as alleged by her. However, it denied her claim as it found that she had not established that she sustained an injury causally related to the employment incident of February 23, 2012.

Although the medical evidence establishes that appellant fractured her left foot, there is no rationalized medical evidence that supports that she sustained an injury causally related to the incidents of February 23, 2012. Dr. Wolf indicated that it was possible that she fractured her foot delivering mail, but that it was curious in a premenopausal woman. His opinion is vague, speculative and insufficient to carry the weight of the evidence.[7] Dr. Haro never positively attributed appellant's fractured foot to her employment activities of February 23, 2012. He noted that she complained of pain while working and discusses his treatment of her. Dr. Haro noted that, when appellant first saw him on March 20, 2012, she had pain in the left foot for one month. However, the mere fact that a condition became evident during a period of employment does not establish causation.[8]

Appellant also submitted magazine or internet articles in support of her claim. The Board has held that such articles lack evidentiary value as they are of general application and not determinative of whether specific conditions are causally relate to the particular employment factors in a claim.[9]

An award of compensation may not be based on surmise, conjecture or speculation. Neither, the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was caused by his employment is sufficient to establish causal relationship.[10] As appellant did not submit a rationalized medical opinion

[5] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

[6] *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

[7] *G.S.*, Docket No. 11-1939 (issued April 17, 2012).

[8] *A.N.*, Docket No. 11-809 (issued January 17, 2012); *see also Robert G. Morris*, 48 ECAB 238,239 (1996).

[9] *K.R.*, Docket No. 11-34 (issued August 2, 2011).

[10] *Walter D. Morehead*, 31 ECAB 188 (1986).

establishing a causal relationship between her accepted employment activities and a diagnosed medical condition, she has failed to meet her burden of proof.

Appellant submitted new evidence on appeal. However, the Board lacks jurisdiction to review such evidence for the first time on appeal.[11]

Appellant may submit this or any other 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 did not establish that she sustained an employment-related injury to her left foot on February 23, 2012, as alleged.

ORDER

IT IS HEREBY ORDERED THATthe December 21, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[11] *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).