United States Department of Labor
Employees' Compensation Appeals Board

D.D., Appellant	)	
and	)	**Docket No. 13-1916**
	)	**Issued: February 24, 2014**
U.S. POSTAL SERVICE, POST OFFICE, New York, NY, Employer	)	

Appearances:
Thomas E. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 19, 2013 appellant filed a timely appeal from the June 17, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 met his burden of proof to establish traumatic injury in the performance of duty on August 16, 2012.

FACTUAL HISTORY

On August 16, 2012 appellant, then a 37-year-old mail carrier, filed a traumatic injury claim alleging that, on that date, he fell after he stepped in a hole in front of his mail truck. He indicated that he twisted his left ankle, banged his right elbow, left knee and jammed his right

[1] 5 U.S.C. § 8101 *et seq.*

shoulder in the performance of duty. Appellant did not initially stop work. A statement accompanied his claim and described the incident of stepping in the hole.

OWCP received several x-ray reports dated August 17, 2012 which were read by Dr. Jay D. Scheikowitz, a Board-certified diagnostic radiologist. They included a lumbosacral spine x-ray that showed degenerative disc disease; a left ankle x-ray, which revealed no acute fracture; a left knee x-ray, which revealed mild degenerative joint disease; a right shoulder x-ray, which revealed no acute fracture and mild degenerative joint disease; and a right elbow x-ray, which showed no fracture. An August 21, 2012 magnetic resonance image (MRI) scan of the left ankle without contrast, read by Dr. Jonathan D. Klug, a Board-certified diagnostic radiologist, revealed a small chronic intrafascial tear in the medial condensation of the plantar aponeurosis and mild peroneus longus tendinosis.

In an August 23, 2012 report, Dr. Michael J. Angel, a Board-certified orthopedic surgeon, noted that appellant sustained an injury at work which occurred when he stepped in a pothole. He examined appellant's left ankle and x-rays of the left ankle. Dr. Angel determined that there was no deformity, atrophy, ecchymosis, swelling or scars of the ankle. He noted that appellant had full range of motion, normal sensation and a normal examination. Dr. Angel diagnosed left ankle peroneal tendon tear/tendinitis, medial plantar fascia partial tear and prescribed a Vectra Air Walker. In an August 23, 2012 disability certificate, he placed appellant off work until further notice. In an August 29, 2012 attending physician's report, Dr. Angel noted that appellant stepped in a pothole at work and sustained a left ankle peroneal tendon tear and a medial plantar fascia partial tear. He checked the box "yes" in response to whether he believed the condition was caused or aggravated by an employment activity. Dr. Angel indicated that appellant was totally disabled from August 16 to September 16, 2012 and partially disabled from September 16 to October 16, 2012. In a September 14, 2012 report, he noted that appellant returned for follow up. Dr. Angel examined appellant and diagnosed left ankle peroneal tendinitis and left foot plantar fasciitis. He recommended physician therapy and indicated that appellant should remain off work until further notice. Dr. Angel also completed a disability certificate on September 14, 2012 placing appellant off work. OWCP also received physical therapy notes.

By letter dated October 5, 2012, OWCP advised appellant that additional factual and medical evidence was needed. It noted that the claim initially appeared to be a minor injury that resulted in little or no lost time from work. OWCP advised appellant that payment of a limited amount of medical expenses was administratively provided because the employing establishment did not controvert continuation of pay or challenge the case. It advised him that the case was being reopened and requested additional factual and medical evidence within 30 days.

In an October 17, 2012 disability certificate, Dr. Angel placed appellant off work until further notice. OWCP also received additional physical therapy notes.

By decision dated November 8, 2012, OWCP denied appellant's claim on the grounds that the medical evidence did not support that a medical condition was caused by the accepted work event.

In an October 17, 2012 report, Dr. Angel noted that appellant was seen for follow up of the left ankle peroneal tendinitis/partial tear, plantar fasciitis/partial tear. He indicated that appellant related that he had completed physical therapy and was no longer allotted further visits. Dr. Angel advised that appellant was unable to return to work because of pain. He noted that appellant related that there was no available light duty and appellant had to stand for long periods of time. Dr. Angel examined appellant and diagnosed left ankle peroneal tendinitis/partial tear and left foot plantar fasciitis/partial tear. He advised that appellant remained off work until a reevaluation in one month. In a November 5, 2012, attending physician's report, Dr. Angel noted findings and diagnoses and checked a box "yes" to indicate that appellant condition was caused or aggravated by work activity.

On April 3, 2013 counsel requested reconsideration. He argued that appellant submitted sufficient factual and medical evidence to establish his claim.

In a February 27, 2013 report, Dr. Adam Cirlincione, a podiatrist, noted that appellant was injured with a twist of his ankle on August 16, 2012 with his job as a letter carrier. He advised that appellant had x-rays which were negative for fracture and received treatment in the form of a boot and physical therapy with no improvement. Dr. Cirlincione indicated that he first saw appellant on November 15, 2012 and explained that the examination revealed antalgic gait with weakness to the peroneal region and an inability to single limb raise on the left side. He advised that appellant failed to improve despite previous care, and he had daily pain with antalgic gait and weakness. Dr. Cirlincione recommended aggressive attempts at bracing or surgery to evaluate his peroneal tendons and posterior tibial tendon for tears. He indicated that appellant was unable to work due to pain, weakness and limited motion and antalgic gait. In a March 28, 2013 report, Dr. Cirlincione opined that appellant's disability was causally related to the August 16, 2012 incident.

By decision dated June 17, 2013, OWCP denied modification of the November 8, 2012 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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[3] and that an injury was sustained in the performance of duty.[4] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

[2] *Id.* at §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *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 the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[6] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[7] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

Rationalized medical opinion evidence is generally required to establish causal relationship. 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 identified by the claimant.[9]

ANALYSIS

There is no dispute that appellant stepped in a hole and fell in front of his mail truck on August 16, 2012. The Board finds that the first component of fact of injury, the claimed incident, that he fell after he stepped in a hole in front of his mail truck, occurred as alleged.

However, the medical evidence is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. The medical evidence contains insufficient reasoning explaining how the specific employment incident on August 16, 2012 caused or aggravated an injury.

In an August 23, 2012 report, Dr. Angel stated that appellant was injured at work when he stepped in a pothole. He noted findings and diagnosed left ankle peroneal tendon tear/tendinitis and medial plantar fascia partial tear. Although Dr. Angel provides conclusory support for causal relationship, he did not provide sufficient medical reasoning to explain the basis of his conclusion that stepping in a hole could have caused or aggravated the diagnosed condition. In his August 29 and November 5, 2012 attending physician's report, he supported causal relationship by checking a box "yes" that appellant's condition was employment related. However, this is insufficient to establish fact of injury, as the checking of a box yes in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[10] Other reports from Dr. Angel are also insufficient to establish the claim as they provided no opinion on causal relationship. Medical evidence which does not offer any opinion

[6] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] *See id*. For a definition of the term "traumatic injury," *see* 20 C.F.R. § 10.5(ee).

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[10] *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[11]

In a February 27, 2013 report, Dr. Cirlincione noted findings and advised that appellant was injured with a twist of his ankle at work on August 16, 2012. In a March 28, 2013 report, he opined that appellant's disability was causally related to the August 16, 2012 incident. However, Dr. Cirlincione did not explain how he arrived at this conclusion. The Board has long held that medical opinions not containing rationale on causal relation are entitled to little probative value and are insufficient to meet appellant's burden of proof.[12] Neither Dr. Angel nor Dr. Cirlincione explained why the August 16, 2012 work incident would have caused or aggravated any of the diagnosed medical conditions. Consequently, their reports are insufficient to establish the claim.

Other medical evidence of record is of limited probative value as it did not provide an opinion on the causal relationship between the August 16, 2012 work incident and the diagnosed medical conditions. OWCP also received physical therapy notes. However, records from a physical therapist do not constitute competent medical opinion as a physical therapist is not a physician as defined under FECA.[13] Thus, the physical therapy records are of no probative medical value.[14]

On appeal, counsel argued that the evidence submitted in his reconsideration request satisfied the burden of proof. However, as noted above the issue is medical in nature and the medical evidence is insufficient to establish his claim.

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 did not meet his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on August 16, 2012.

[11] *Michael E. Smith*, 50 ECAB 313 (1999).

[12] *Carolyn F. Allen*, 47 ECAB 240 (1995).

[13] *A.C.*, Docket No. 08-1453 (issued November 18, 2008). *See* 5 U.S.C. § 8101(2) (provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law).

[14] *Jane A. White*, 34 ECAB 515, 518 (1983).

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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