United States Department of Labor
Employees' Compensation Appeals Board

C.J., Appellant	)	
and	)	**Docket No. 16-0055**
	)	**Issued: April 5, 2016**
U.S. POSTAL SERVICE, POST OFFICE, McLean, VA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 13, 2015 appellant filed a timely appeal from an August 5, 2015 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.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury causally related to a March 2, 2015 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence to OWCP after it rendered its August 5, 2015 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 510.2(c)(1).

FACTUAL HISTORY

On March 3, 2015 appellant, then a 61-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained an ankle injury on March 2, 2015. He claimed that a coworker hit his ankle with a piece of equipment causing him to fall. Appellant stopped work that day.

In a March 2, 2015 duty status report (Form CA-17), Dr. Jong Hee Cho, a chiropractor, advised that appellant was unable to return to work until March 23, 2015. In a March 2, 2015 prescription form, he advised that appellant sustained a right ankle injury, Achilles tendon sprain, and contusion. Dr. Cho noted that an x-ray was unremarkable and recommended further evaluation by a podiatrist.

By letter dated March 11, 2015, the employing establishment controverted appellant's claim because he failed to submit medical evidence from a qualified physician.

By letter dated March 11, 2015, OWCP advised appellant of the type of evidence needed to establish his claim.

In a March 9, 2015 report, Dr. Joonhyun Yoon, a podiatric surgeon, advised that appellant's symptoms began a week earlier at work when a mail cart hit his right leg. He noted that appellant indicated that the pain was improving, but increased with ambulation and activity. On examination Dr. Yoon noted an antalgic gait on the right, resolving ecchymosis and swelling on the posterior right distal leg, healing red granulation tissue on the posterior right leg, moderate ankle tenderness, mild ankle swelling, and pain along the distal Achilles tendon and distal posterior fibula with no crepitation. He assessed right tendinitis and right ankle fracture. However, an x-ray of the right ankle and foot revealed no acute fracture. Dr. Yoon noted that appellant had a work-related injury and was unable to perform his work. On March 17, 2015 he prescribed physical therapy and acupuncture.

In a March 19, 2015 statement, appellant advised that he was pushing a mail hamper at work when a coworker ran into his heel, ankle, and right hip with a large metal crate. He noted that he sustained a laceration and fell to the ground landing on his right elbow and hip.

By decision dated April 14, 2015, OWCP denied appellant's claim finding that the evidence of record did not support that the claimed injury occurred as alleged.

On May 2, 2015 appellant requested reconsideration. He submitted a witness statement supporting that he was accidentally struck by an all-purpose container pushed by a coworker.

Appellant also submitted additional medical evidence. In a March 2, 2015 report, Dr. Cho advised that appellant was injured at work when a coworker hit his right foot with a piece of equipment. He indicated that appellant related that he fell immediately and felt acute pain on the right foot with bleeding. Dr. Cho noted that appellant could not stand or walk and also felt pain in his right calf, thigh, hip, and low back. He assessed ankle injury, lumbago, sciatica, and lumbar subluxation. Dr. Cho advised that a right ankle x-ray was unremarkable, but there was a possibility of hairline fracture not shown on the plain x-ray film.

Several progress reports from Dr. Yoon were submitted. In a March 17, 2015 report, Dr. Yoon advised that appellant was experiencing right ankle pain. He noted that he felt less pain when wearing a fracture boot, but felt intermittent shooting pain to his posterior leg when he tried to move his ankle. In an April 2, 2015 report, Dr. Yoon advised that appellant was experiencing some improvement with chiropractic physical therapy. He assessed tendinitis and ankle fracture. Dr. Yoon noted that appellant experienced a work-related injury and was unable to work. In an April 13, 2015 report, he detailed appellant's treatment history. Dr. Yoon noted that appellant was doing better, but was still experiencing stiffness. Examination of the right ankle revealed no tenderness, mild swelling, no erythema, and a slightly thickened distal Achilles tendon. Dr. Yoon noted that appellant's condition was work related and indicated that he reached maximum medical improvement (MMI).

In an April 22, 2015 report, Dr. Chin Oh Kim, an internist, advised that appellant was seen and diagnosed with an ankle injury on March 2, 2015. He noted that appellant needed to see a foot and ankle specialist for his condition.

By decision dated August 5, 2015, OWCP modified its prior decision finding that the factual basis for the claim was accepted, but that the medical evidence of record remained insufficient to establish that the work incident caused or contributed to the claimed condition.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[3] including that the individual is an "employee" within the meaning of FECA and that he or she filed a claim within the applicable time limitation.[4] The employee must also establish an injury in the performance of duty as alleged and that any disability for work was causally related to the employment injury.[5]

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. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[6]

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

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *R.C.*, 59 ECAB 427 (2008).

[5] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *T.H.*, 59 ECAB 388 (2008).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[7]

ANALYSIS

On March 2, 2015 appellant's right ankle was hit by a piece of equipment. The evidence supports that the claimed work incident occurred as alleged. However, the Board finds that the medical evidence of record is insufficient to establish that the employment incident on March 2, 2015 caused a right ankle injury.

In his March 9, 2015 report, Dr. Yoon advised that appellant's symptoms began when a mail cart hit his right leg at work. He assessed right tendinitis and right ankle fracture; yet he noted that an x ray of the right ankle and foot revealed no acute fracture. Dr. Yoon advised that appellant had a work injury and could not perform his work. Although he attributed appellant's condition to the March 2, 2015 work incident, Dr. Yoon failed to explain how the incident caused appellant's tendinitis and right ankle fracture. The Board has long held that medical opinions not containing rationale on causal relation are of diminished probative value and are generally insufficient to meet appellant's burden of proof.[8] Dr. Yoon also failed to explain how he determined that appellant had a right ankle fracture, despite the fact that an x-ray revealed no acute fracture. Other reports by Dr. Yoon are also insufficient to discharge appellant's burden of proof. In his March 17, April 2, and 13, 2015 progress reports, Dr. Yoon described appellant's condition as work related. These reports are insufficient to discharge appellant's burden of proof as they also fail to provide adequate rationale explaining how the March 2, 2015 employment incident caused tendinitis and right ankle fracture.

Reports from Dr. Cho including his March 2, 2015 report, which advised that appellant was injured at work and assessed ankle injury, lumbago, sciatica, and lumbar subluxation, cannot constitute competent medical evidence. Medical opinion evidence, in general, can only be given by a qualified physician.[9] As defined under FECA, a physician includes a chiropractor only to the extent that his reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[10] Subluxation means an incomplete dislocation, off-centering, misalignment, fixation, or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.[11] Dr. Cho diagnosed lumbar subluxation, but there was no indication in the report that the chiropractor obtained or reviewed x-rays in rendering his diagnosis of subluxation. As a result, he does not meet the statutory definition of physician, and his reports lack probative value.[12] Furthermore, appellant claimed an ankle injury, not a spine injury. The

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

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

[9] *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

[10] 5 U.S.C. § 8101(2); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[11] 20 C.F.R. § 10.5(bb).

[12] *L.S.*, Docket No. 07-560 (issued June 22, 2007).

Board has held that even under the circumstances where a chiropractor is recognized as a physician under FECA, the chiropractor is still not considered a physician in diagnosing or evaluating disorders of the extremities, although those disorders may originate in the spine.[13]

The Board notes that appellant indicated that he sustained a laceration as a result of the work injury. OWCP procedures will allow a minor injury to be accepted without a medical report if the condition can be verified on visual inspection by a lay person, (*e.g.*, burn, laceration, insect sting or animal bite).[14] This provision, however, is only applicable if no time is lost from work due to disability. In the present case, appellant has indicated that he stopped work on March 2, 2013.

Consequently, appellant has submitted insufficient medical evidence to establish his claim. Causal relationship is a medical question that must be established by probative medical opinion from a physician.[15] The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated his condition.[16]

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 has not met his burden of proof in establishing that he sustained an injury causally related to a March 2, 2015 employment incident.

[13] *George E. Williams*, 44 ECAB 530 (1993).

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(1) (January 2013).

[15] *Jennifer Atkerson*, 55 ECAB 317 (2004).

[16] *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2016
Washington, DC

Christopher J. Godfrey, 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