United States Department of Labor
Employees' Compensation Appeals Board

B.C., Appellant	)	
and	)	**Docket No. 17-1771**
	)	**Issued: January 29, 2018**
FEDERAL JUDICIARY, DISTRICT OF COLUMBIA SUPERIOR COURT, Washington, DC, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 14, 2017 appellant filed a timely appeal from a May 3, 2017 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 to consider the merits of the case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury causally related to the October 6, 2016 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its May 3, 2017 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore the Board is precluded from reviewing this additional evidence on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On October 11, 2016 appellant, then a 54-year-old acting branch chief, filed a traumatic injury claim (Form CA-1) alleging that on October 6, 2016 she slipped and fell on a marble floor landing on her knees, ankle, and hands. She asserted that she twisted her right ankle, injured both knees, and was experiencing back pain as a result of the fall.

In support of her claim, appellant submitted a report from the U.S. Marshals Service noting that on October 6, 2016 appellant slipped and fell to the floor in the DC Superior Court Building. She reported pain in her right ankle, right knee, and back. The court nurse provided appellant with an elastic band for ankle support and appellant telephoned the court nurse station.

On October 6, 2016 Grace Grant, a physician assistant, examined appellant due to back pain and right ankle soft tissue injury. She diagnosed ankle pain. Charles S. Glenn, a physician assistant, examined appellant on October 12, 2016 and diagnosed right ankle sprain. He noted appellant's history of injury as slipping and falling on October 6, 2016. Mr. Glenn found no erythema or ecchymosis in her knees bilaterally. He diagnosed bilateral knee contusion and right ankle sprain.

In a letter dated October 31, 2016, OWCP informed appellant that when it received her claim it appeared to be a minor injury that resulted in minimal or no lost time from work. It noted that a limited amount of medical expenses were administratively approved without consideration of the merits of her claim. OWCP requested additional factual and medical evidence in support of her traumatic injury claim. It afforded appellant 30 days to respond.

Appellant underwent a magnetic resonance imaging (MRI) scan of her left knee on October 24, 2016, which demonstrated signal abnormality within the patellar tendon consistent with a strain as well as fluid anterior to the patellar tendon consistent with recent trauma. An October 24, 2016 MRI scan of her right knee showed a popliteal cyst. Mr. Glenn completed an additional treatment note on October 26, 2016.

Dr. Richard Brouillette, an osteopath, completed a report on November 1, 2016 and noted appellant's preexisting condition of lumbago which required treatment on May 25, 2016. He diagnosed chronic pain syndrome, but did not mention the October 6, 2016 employment incident.

By decision dated December 5, 2016, OWCP denied appellant's claim, finding that although she was a federal employee who filed a timely claim, the evidence of record was insufficient to establish that the claimed incident occurred as alleged.

On February 1, 2017 appellant requested reconsideration of the December 5, 2016 OWCP decision. She provided a factual statement indicating that on October 6, 2016 she walked from her office past the guards' desk and her feet slipped from under her on the marble floor. Appellant's left knee hit the floor and her right leg and ankle twisted under her. She braced herself with her arms to prevent her head and face from hitting the floor. Appellant's body twisted to the left and the guard came to her assistance. A witness informed appellant that there was hand sanitizer on the floor. The guard assisted appellant back to her office and the court nurse examined her there. The court nurse instructed appellant to report to a hospital emergency

room due to swelling in her knee and ankle. Appellant also experienced pain in her back after the fall.

In a report dated January 25, 2017, Dr. Brouillette diagnosed lumbar facet joint syndrome and spondylosis. He again diagnosed chronic pain syndrome. On February 23, 2017 Dr. Brouillette examined appellant due to facet joint syndrome, spondylosis of the lumbar spine, lumbar radiculitis, and chronic pain syndrome. In a March 16, 2017 note, Dr. Brouillette diagnosed lumbar stenosis, facet joint syndrome, and lumbar radiculitis.

By decision dated May 3, 2017, OWCP modified its December 5, 2016 decision to reflect that appellant had established the factual element of her claim. However, it found that appellant had not submitted sufficient medical evidence to establish a diagnosed condition as found by a physician which was causally related to the accepted work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, 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 or specific condition for which compensation is claimed is causally related to the employment injury.[4]

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."[5] 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 which is alleged to have occurred.[6] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[8]

[3] *Supra* note 1.

[4] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[5] 20 C.F.R. § 10.5(ee).

[6] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *Id*.; *M.P.*, Docket No. 17-1221 (issued August 21, 2017).

[8] *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *M.P., id.*

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[9] 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 employee.[10] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.[12] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[13]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained a traumatic injury on October 6, 2016.

Appellant filed a traumatic injury claim on October 11, 2016 alleging that on October 6, 2016 she slipped and fell on the employing establishment's marble floor, landing on her knees, ankle, and hands. She alleged that she twisted her right ankle, injured both knees, and was experiencing back pain due to her fall. OWCP accepted that the October 6, 2016 fall occurred as alleged, but denied appellant's claim finding that she had not submitted rationalized medical opinion evidence sufficient to establish causal relationship between her diagnosed medical condition and the October 6, 2016 fall.

Appellant submitted medical evidence consisting of reports from Dr. Brouillette dated November 1, 2016, and January 25, February 23, and March 16, 2017 diagnosing lumbago, lumbar facet joint syndrome and spondylosis of the lumbar spine, lumbar radiculitis, and chronic pain syndrome, respectively. Dr. Brouillette did not mention or describe appellant's October 6, 2015 employment-related fall in any of his reports, nor did he attribute any of her diagnosed conditions to this fall. As these reports do not provide an opinion on the cause of appellant's conditions, these opinions are insufficient to establish causal relationship.[14]

[9] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[11] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[12] *See Charles H. Tomaszewski*, 39 ECAB 461 (1988); *M.P.*, *supra* note 7.

[13] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.P.*, *supra* note 7.

[14] *D.R.*, Docket No. 16-0528 (issued August 24, 2016).

Appellant also submitted reports from physician assistants. However, physician assistants are not considered physicians under FECA and, therefore, their medical reports have no probative value.[15] As such, the Board finds that appellant failed to submit sufficient medical evidence to establish that her October 6, 2016 injury resulted in medically diagnosed knee, ankle, or back injuries.

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 her burden of proof to establish a traumatic injury causally related to the accepted October 6, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT May 3, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 29, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

[15] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrist, dentists, clinical psychologists, optometrist, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).