United States Department of Labor
Employees' Compensation Appeals Board

C.G., Appellant	)	
and	)	**Docket No. 18-0549**
	)	**Issued: November 29, 2018**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Shreveport, LA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 January 22, 2018 appellant, through counsel, filed a timely appeal from a November 7, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish left ankle, head, and neck conditions causally related to the accepted November 7, 2016 employment incident.

FACTUAL HISTORY

On November 9, 2016 appellant, then a 60-year-old ultrasound technician, filed a traumatic injury claim (Form CA-1) alleging that she fractured her left ankle and injured her head and neck while in the performance of duty on November 7, 2016. She related that she sat down on a stool because she was "feeling funny." Appellant asked a coworker to get her some relief and then she passed out. She did not remember anything and awakened surrounded by coworkers. Appellant was taken to an emergency room. She stopped work on the date of injury.

Medical records dated November 7, 2016 from the employing establishment's medical center and Christus Health Northern Louisiana at Christus Highland indicated that appellant was evaluated for loss of consciousness at work on that day. Appellant underwent physical and diagnostic examination. She was diagnosed as having, among other things, a fractured left ankle.

Brain and chest x-ray reports dated November 7, 2016 from Dr. Patrick B. Leopard, a Board-certified radiologist, were received. Both reports provided an admitting diagnosis of syncope with head injury and left distal fibula fracture. In the brain x-ray report, Dr. Leopard provided an impression that no acute intracranial abnormality was identified on noncontrast computerized tomography imaging. In the chest x-ray report, he provided an impression that no radiographic abnormality was identified.

A November 8, 2016 medical report from Dr. William H. Haynie, a Board-certified cardiologist, was received. Dr. Haynie related a history of the November 7, 2016 incident. He described findings on physical and diagnostic examination. Dr. Haynie noted an impression of syncope and history of hypertension.

In an incident report dated November 8, 2016, O.H., an employing establishment supervisor, noted that on November 7, 2016 appellant suddenly became nauseous and dizzy. Appellant sat down on a stool and then suddenly lost consciousness and fell onto the floor. She sustained a left lower leg/ankle fracture and was hospitalized overnight.

On November 10, 2016 the employing establishment provided appellant with an authorization for examination and/or treatment (Form CA-16) regarding her fractured left ankle.

In a November 10, 2016 e-mail, D.C., appellant's coworker, noted that she did not witness the November 7, 2016 incident, but that she had asked employees who had witnessed the incident to provide her with a written statement. She related a conversation that she had with S.T., an employee, about appellant's condition on that day. S.T. asked appellant about her weekend and appellant replied that she was not feeling well. She indicated that appellant had high blood pressure. D.C. related that she was informed by her chief nurse that appellant had not been feeling well for the past two weeks and that the day of the alleged incident was the first day she had strength.

In a November 11, 2016 statement, appellant described the November 7, 2016 incident. She and a student (scrub technician) were in room 1 and together they wiped down the room and draped a bed. After opening the room, appellant told the student to scrub and set up the room. Both appellant and the student scrubbed when appellant felt funny and sat down on a stool hoping that it would go away. It did not, and she politely asked a coworker to get her some relief. The coworker immediately placed a stool under appellant and went to get relief. Appellant noted that she passed out and reiterated that she did not remember anything about the incident. She was taken to an emergency room on a stretcher with a bruised or fractured leg.

In a note dated November 16, 2016, Dr. Timothy W. Talbert, an attending Board-certified orthopedic surgeon, indicated that appellant had been under his medical care since November 7, 2016. He excused her from work until cleared. Dr. Talbert related that appellant would follow up in clinic in four weeks to reassess her work status.

In a letter dated November 21, 2016, the employing establishment controverted appellant's claim, contending that it had not received any medical documentation to support that her fall was due to employment factors. It asserted that she had an idiopathic fall and did not strike anything going down.

The employing establishment submitted witness statements from two employees, S.T. and N.S., who noted that on November 7, 2016 appellant told them that she did not feel well during the past weekend and that her blood pressure was "a little high." Appellant related that she was not feeling well and a nurse got her a chair to sit down. She sat down for about one minute and then passed out and fell to the floor. Someone from the anesthesia department and a surgeon checked on appellant. Appellant woke up and looked very pale. She was placed in a bed and rolled to the emergency room. D.C., in an undated note, indicated that appellant was awake and alert and complained about left ankle pain while wearing an oxygen mask en route to the emergency room. A November 7, 2016 report of contact noted that appellant passed out in the operating room and was transported by stretcher to its emergency room.

In additional reports dated November 16 and 28 and December 7, 2016, Dr. Talbert discussed findings on physical and x-ray examination and diagnosed other closed fracture of the distal end of the left fibula with routine healing, subsequent encounter, with a date of injury on November 7, 2016. He reiterated that she could perform sedentary light-duty work with specific restrictions, but was limited in her ability to travel to and from work daily. On November 16, 2016 Dr. Talbert advised that appellant could not report to work as her inability to navigate stairs at home prevented transport to work.

OWCP, by development letter dated December 27, 2016, explained to appellant that when her claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the merits of the case, payment of a limited amount of medical expenses was administratively approved. It indicated that it had reopened the claim for consideration because a claim for wage-loss compensation had been received. OWCP requested additional medical and factual evidence. Appellant was also provided a questionnaire for her completion regarding the factual circumstances of her injury. OWCP afforded her 30 days to

submit the requested information. It also requested that the employing establishment submit treatment notes if appellant was treated at an employing establishment medical facility.

Appellant submitted a November 7, 2016 e-mail from L.M., an employing establishment human resources specialist, who witnessed the incident. L.M noted that while appellant was on the floor her head was under the foot end of an OR table. A call was made for a stretcher and after a few more minutes passed appellant came around and grabbed her left ankle. An ice pack was placed on her head and ankle. Appellant was then placed on a stretcher, given an oxygen mask, and taken to the emergency room for evaluation.

A November 8, 2016 bill with an illegible signature indicated that appellant had a diagnosis of left spinal distal fibula fracture and that a tall walking boot was ordered.

Appellant submitted a December 28, 2016 letter from Hillary Davis, a physician assistant, who noted that appellant could return to full-duty work with no restrictions on January 2, 2017.[3]

In an subsequent report dated December 28, 2016, Dr. Talbert again examined appellant and reiterated his assessment of pain in the left ankle and joints of the left foot and other closed fracture of the distal end of the left fibula with routine healing, subsequent encounter.

On January 3, 2017 appellant responded to OWCP's development questionnaire. She essentially reiterated the factual history of injury she provided on the November 9, 2016 CA-1 form and in her November 11, 2016 statement. Appellant also indicated that when she passed out and hit the floor surface, a stool was on top of her. She claimed that her foot was around the stool. Appellant related that she had no history of fainting spells and that she did not suffer from a heart condition or epileptic seizures. She maintained that there was no hazard or special condition at work that caused or contributed to her injury. Appellant indicated that she hit the surface of the floor on her left side and the stool fell on top of her and landed beside her. She noted that subsequently she was transferred to Highland Clinic where a boot was placed on her foot.

On January 27, 2017 OWCP notified the employing establishment that it had reviewed the statements from witnesses and appellant and the employing establishment's challenge to the claim. It requested that the employing establishment respond to appellant's allegation that her foot became tangled in a footstool that she was sitting on when she passed out and that the stool was on top of her when she came to. OWCP noted that the witness statements were absent any description of the right foot becoming tangled in the stool or that the stool fell on top of appellant when she hit the floor. As such, it requested that the employing establishment provide a statement from a knowledgeable supervisor or other person with immediate knowledge of the reported incident, as to the accuracy of appellant's allegation by January 31, 2017.

In a January 31, 2017 e-mail, L.M. related that she was not sure where the stool was when appellant fell as everyone ran to her assistance and focused on her. She thought the stool was still in an upright position. L.M. also did not remember whether appellant's feet were entangled in the

[3] Appellant returned to work on January 2, 2017.

stool. She knew that appellant hit hard due to the impact and that appellant was not fully conscious when she came to her side.

By decision dated February 1, 2017, OWCP denied appellant's claim for a January 7, 2016 work injury. It found that her fall was due to vasovagal syncope, which was considered to be personal nonoccupational pathology without intervention or contribution by a factor of employment and, therefore the injury was not considered compensable.

By letter received by OWCP on February 9, 2017, appellant, through counsel, requested a telephone hearing before an OWCP hearing representative.

In a November 8, 2016 discharge summary, Dr. Peyman Roohani, a Board-certified internist, reported that appellant presented with a history of high blood pressure and chief complaint of loss of consciousness after she collapsed at work on November 7, 2016 while waiting for a colleague to get her a stool. Appellant informed Dr. Roohani that this was her first syncopal episode. It lasted three to four minutes. Appellant related that she had been standing for at least two and one-half hours at work before she felt lightheaded and later lost consciousness. She had also been very stressed lately at work. Dr. Roohani examined appellant and diagnosed chronic hypertension, acute ankle fracture, and syncope.

During the July 14, 2017 telephone hearing, appellant and counsel contended that her fall was not idiopathic in nature. During her testimony she reiterated that she passed out on the stool and hit the ground and that her leg was wrapped around the stool.

By decision dated November 7, 2017, an OWCP hearing representative affirmed the February 1, 2017 decision, as modified. She found that the evidence of record was sufficient to establish that appellant had an unexplained fall on November 7, 2016 that occurred in the performance of duty. However, the claim remained denied because the medical evidence of record was insufficient to establish a medical condition causally related to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that 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.[6] There are two components involved in establishing fact of injury. First, the employee must submit

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged.[7]

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8]

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified incidents.[9] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish left ankle, head, and neck conditions causally related to the accepted November 7, 2016 employment incident.

The Board notes initially that the employing establishment controverted the claim asserting that appellant's fall was idiopathic in nature. In the November 7, 2017 decision, OWCP's hearing representative extensively analyzed the record and found that the medical evidence of record did not clearly establish that appellant's fall was idiopathic in nature. The hearing representative concluded that the incident must be considered an unexplained fall. The issue on appeal is therefore whether appellant has met her burden of proof to establish that her diagnosed conditions were causally related to the accepted employment incident.

Appellant submitted a series of reports dated November 9 to December 28, 2016 from Dr. Talbert. In his reports, Dr. Talbert discussed examination findings, diagnosed other closed fracture of the distal end of the left fibula with routine healing and left ankle and joints pain, and addressed appellant's work restrictions. However, he failed to provide a specific opinion as to whether appellant's conditions and work restrictions were caused or aggravated by the accepted work incident.[11] Thus, the Board finds that Dr. Talbert's reports are insufficient to establish appellant's burden of proof.

Similarly, the reports of Dr. Haynie and Dr. Roohani are insufficient to establish appellant's burden of proof. In his November 8, 2016 report, Dr. Haynie described the November 7, 2016 employment incident and examination findings, and diagnosed syncope and

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[7] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[8] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[9] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[10] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[11] *C.B.,* Docket No. 09-2027 (issued May 12, 2010); *J.F.,* Docket No. 09-1061 (issued November 17, 2009); *A.D.,* 58 ECAB 149 (2006) (medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship).

history of hypertension. In his November 8, 2016 discharge summary, Dr. Roohani described the accepted employment incident and examination findings. He diagnosed chronic hypertension, acute ankle fracture, and syncope. Neither Dr. Haynie nor Dr. Roohani offered a specific opinion as to whether the accepted employment incident caused or aggravated appellant's conditions.[12]

Dr. Leopard's November 7, 2016 x-ray reports, which addressed appellant's brain and chest conditions, are of limited probative value as he simply performed diagnostic tests and did not address history of injury[13] or offer a specific opinion as to whether the accepted employment incident caused or aggravated appellant's conditions.[14]

Ms. Davis' December 28, 2016 report noted that appellant may return to full-duty work with no restrictions on January 2, 2017. The Board has held that a medical report may not be considered probative medical evidence if there is no indication that the person completing the report qualifies as a physician under FECA.[15] Therefore a report from a certified physician assistant is of no probative value to establish appellant's claim as physician assistants are not considered physicians under FECA.[16] Thus, the opinion of Ms. Davis is of no probative medical value.

A November 8, 2016 bill with an illegible signature diagnosed left spinal distal fibula fracture and ordered a tall walking boot. The Board has held that unsigned reports and reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification.[17] Thus, this report is of no probative value.

The Board finds that appellant has failed to submit rationalized, probative medical evidence sufficient to establish left ankle, head, and neck conditions causally related to her falling off the stool on November 7, 2016. Appellant therefore did not meet her burden of proof.[18]

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[12] *Id.*

[13] *Frank Luis Rembisz,* 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

[14] *See* cases cited, *supra* note 11.

[15] *M.M.*, Docket No. 11-1377 (issued December 12, 2011); *R.M.*, 59 ECAB 690 (2008); *E.K.*, Docket No. 09-1827 (issued April 21, 2010); section 8101(2) of FECA provides as follows: (2) the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

[16] *See K.R.,* Docket No. 18-0711 (issued September 6, 2018).

[17] *See R.M.,* 59 ECAB 690 (2008); *D.D.,* 57 ECAB 734 (2006); *Richard J. Charot,* 43 ECAB 357 (1991).

[18] The case record includes a November 10, 2016 CA-16 form. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane,* 54 ECAB 608 (2003).

On appeal, counsel contends that OWCP's November 7, 2017 decision is contrary to fact and law. Such a broad claim without proof fails for the same reasons as outlined above.

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 left ankle, head, and neck conditions causally related to the accepted November 7, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 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