United States Department of Labor
Employees' Compensation Appeals Board

D.A., Appellant	)	
and	)	**Docket No. 18-0783**
	)	**Issued: November 8, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Huntsville, AL, 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 March 1, 2018 appellant filed a timely appeal from an October 27, 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 over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish bilateral ankle conditions causally related to the accepted July 10, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record provided to the Board includes evidence received after OWCP issued its October 27, 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 for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On July 18, 2017 appellant, then a 56-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her ankles on July 10, 2017 while carrying parcels in the performance of her federal employment. She stopped work on that day. Appellant's supervisor noted, on the CA-1 form, that appellant told her physician that the alleged injury occurred on June 27, 2017.[3]

In a July 10, 2017 note, appellant indicated that she injured both ankles that day while walking to deliver mail.

In a July 11, 2017 duty status report (Form CA-17), Dr. Rupa B. Shiva, a family practitioner, reported a July 10, 2017 date of injury. She noted that appellant had a mounted route and that, while she had to walk some, she drove most of the day. A diagnosis of ankle pain was provided. Appellant was released to full-duty work with standing and walking restrictions.

In a July 11, 2017 attending physician's report (Form CA-20), Dr. Shiva reported a June 27, 2017 date of injury when appellant was walking/lifting. She diagnosed bilateral ankle sprain. In unsigned July 11 and 25, 2017 visit summaries for the employing establishment, Dr. Shiva also reported an injury date of June 27, 2017. She diagnosed pain in her bilateral ankles and joints of both feet. On July 25, 2017 Dr. Shiva referred appellant to physical therapy as a result of "pain in both ankles." Medical authorization requests were also received.

In an August 4, 2017 development letter, OWCP advised appellant that additional factual and medical evidence was necessary to establish her claim. It also provided her with a questionnaire for completion. OWCP afforded appellant 30 days to provide the requested information.

In an August 11, 2017 questionnaire, appellant indicated that the injury occurred on July 10, 2017 at about 11:00 a.m., while she was going up a set of stairs to deliver a heavy package. She stated that her ankles were unsteady and painful during each step. Appellant noted that the package delivery for her route had doubled in the prior year and that, while she had felt twinges in her ankles during the performance of her duties for about two weeks, it had not interfered with her job duties until July 10, 2017. She described the July 10, 2017 pain as sharp and immediate. Appellant also noted that it was physically challenging to complete her assignment.

OWCP received an August 11, 2017 job offer, a medical referral dated July 25, 2017, an unsigned page with miscellaneous data, and a duplicate copy of Dr. Shiva's July 11, 2017 duty status report (Form CA-17) which reported a date of injury of July 10, 2017 and diagnosed ankle pain.

OWCP also received additional evidence from Dr. Shiva which noted a date of injury of June 27, 2017. This included: a July 11, 2017 Form CA-20; an August 11, 2017 medical note and

[3] This statement was repeated in a July 27, 2017 statement from the employing establishment.

medical authorization request; medical reports dated July 11 and 25, and August 11 and 18, 2017; and work restriction documents dated July 11 and 25, and August 11 29, 2017.

By decision dated September 7, 2017, OWCP denied appellant's traumatic injury claim, finding that she had not provided sufficient medical evidence which diagnosed a medical condition in connection with the accepted work events of July 10, 2017. It specifically noted that a diagnosis of pain was a symptom and not a diagnosis of a medical condition.

On September 26, 2017 appellant requested reconsideration.

In a September 18, 2017 note, Dr. Jack M. Englert, a Board-certified family practitioner, indicated that appellant had been delivering mail and packages for 26 years. On July 10, 2017 a specific event occurred while she was carrying a heavy package up a flight of stairs. Dr. Englert noted that both ankles hurt and that they had not gotten better since July 10, 2017. He reported that bilateral pes planus x-rays showed bilateral degenerative joint disease and bone spur formation. Examination showed pain and crepitation and bilateral decreased range of motion with prominent bilateral Achilles tendons. Dr. Englert diagnosed bilateral degenerative joint disease both feet and bilateral Achilles tendinitis.

A September 19, 2017 physical therapy referral and a September 19, 2017 work restriction form from Dr. Matthew J. DeOrio, an orthopedic surgeon, diagnosed bilateral nodular noninsertional Achilles tendinopathy. Dr. DeOrio noted that the condition was considered work related.

In a September 19, 2017 report, Ashelee Cooper, a certified nurse practitioner, noted the history of appellant's July 10, 2017 work incident. She provided an assessment of bilateral nodular noninsertional Achilles tendinopathy.

Physical therapy reports dated August 28, 30, and 31, and September 5, 6, and 8, 2017 were received. Dr. DeOrio also submitted billing reports which noted diagnoses of bilateral nodular noninsertional Achilles tendinopathy.

By decision dated October 27, 2017, OWCP modified its September 7, 2017 decision to find that appellant had established fact of injury, but the claim remained denied as causal relationship had not been established between the diagnosed medical conditions and the July 10, 2017 work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish 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 filed within the applicable time limitation 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

[4] *Supra* note 1.

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.[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 or she 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 rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[7] This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish bilateral ankle conditions causally related to the accepted July 10, 2017 employment incident.

In support of her claim, appellant submitted medical evidence from Dr. Shiva. For those reports in which Dr. Shiva referenced a date of injury of June 27, 2017, such evidence is not applicable to this claim as it refers to a different date of injury. In her July 11, 2017 duty status report, Dr. Shiva reported a July 10, 2017 date of injury and provided a diagnosis of ankle pain. Pain is a description of a symptom rather than a clear diagnosis of a medical condition.[9] Furthermore, Dr. Shiva's report is of little probative value in establishing causal relationship as she failed to describe appellant's alleged employment incident and offer an opinion on causal relationship. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[10] Thus, these reports are

[5] *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

[6] *A.D., id.; T.H.*, 59 ECAB 388 (2008).

[7] *A.D., supra* note 5; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *S.H.*, Docket No. 17-1660 (issued March 27, 2018); *James Mack*, 43 ECAB 321 (1991).

[9] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Robert Broome*, 55 ECAB 339 (2004) (the Board has consistently held that pain is a symptom rather than a compensable medical diagnosis).

[10] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

insufficient to establish that the July 10, 2017 work incident caused, contributed to, or aggravated any ankle or foot condition.

In his September 18, 2017 note, Dr. Englert reported that, on July 10, 2017, appellant hurt both ankles while she was carrying a heavy package up a flight of stairs. While he diagnosed bilateral degenerative joint disease both feet and bilateral Achilles tendinitis, he did not address causal relationship. As previously noted, medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[11]

In a September 19, 2017 physical therapy referral and September 19, 2017 work restriction form, Dr. DeOrio provided a diagnosis of bilateral nodular noninsertional Achilles tendinopathy. While he noted that the condition was work related, Dr. DeOrio failed to provide his medical reasoning as to how and why the accepted employment incident would result in a diagnosis of bilateral nodular noninsertional Achilles tendinopathy. Without explaining how, physiologically, the movements involved in the accepted employment incident caused or contributed to the diagnosed condition, Dr. DeOrio's opinion on causal relationship is of limited probative value.[12]

The remaining evidence, including the nurse practitioner's September 19, 2017 report and the physical therapy reports, are insufficient to satisfy appellant's burden of proof because certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[13] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[14]

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[15] Appellant's honest belief that the July 10, 2017 employment incident caused her medical conditions, however sincerely held, does not constitute the medical evidence to establish causal relationship.[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.

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[11] *Id.*

[12] *See L.B.*, Docket No. 17-1600 (issued March 9, 2018).

[13] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[14] *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).

[15] *G.E.*, Docket No. 17-1719 (issued February 6, 2018); *D.D.*, 57 ECAB 734 (2006).

[16] *G.E., id.; H.H.*, Docket No. 16-0897 (issued September 21, 2016).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a bilateral ankle condition causally related to the accepted July 10, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2018
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