United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 19-0803**
	)	**Issued: September 10, 2019**
U.S. POSTAL SERVICE, HIBISCUS CARRIER ANNEX, Miami, FL, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 4, 2019 appellant, through counsel, filed a timely appeal from a September 17, 2018 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.[3]

[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.*

[3] The Board notes that, following the September 17, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury causally related to the accepted July 10, 2018 employment incident.

FACTUAL HISTORY

On July 20, 2018 appellant, then a 32-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on July 10, 2018 he twisted his right ankle while in the performance of duty, irritating his preexisting sciatica. He noted that he had previously twisted his right ankle on May 14, 2018. Appellant also noted that his sciatica resulted from being a gunshot victim in October 2010. He stopped work on July 12, 2018 and returned to work on July 16, 2018. On the reverse side of the claim form, R.T., appellant's supervisor controverted the claim. In a letter dated August 2, 2018, S.L.-S., a health and resource management specialist, also controverted the claim.

In a form medical report dated July 12, 2018, Dr. Anique M. Bryan, an attending Board-certified family practitioner, diagnosed right hip pain. In a return to work note also dated July 12, 2018, she indicated that appellant had a right hip injury. In both the report and note, Dr. Bryan released appellant to return to temporary light-duty work effective that day. She noted that he could return to full-duty work with no restrictions on October 15, 2018.

OWCP, in a development letter dated August 10, 2018, informed appellant of the deficiencies of his claim. It requested that he submit a narrative medical report from his physician which contained a detailed description of findings and diagnoses, explaining how the reported incident caused or aggravated his medical condition. OWCP also provided a questionnaire for appellant's completion. It noted that it was not clear if he was filing an occupational disease or a traumatic injury claim and requested clarification on his claim. OWCP afforded appellant 30 days to respond.

On August 16, 2018 appellant responded to OWCP's development questionnaire. He reiterated his history of injury on July 10, 2018 and claimed that he had not experienced any sciatic pain which prevented him from performing his work duties.

Appellant submitted an incomplete and undated authorization for examination and/or treatment (Form CA-16), which noted dates of injury as May 4 and July 10, 2018. Attached to the form was a Part B -- Attending Physician's Report dated August 9, 2018 from Dr. Bryan. Dr. Bryan related a history of injury that appellant twisted his right ankle on two occasions at work on May 4 and July 10, 2018. Appellant also had a history of a bullet lodged in his right hip. She checked a box marked "yes" indicating that appellant had a condition caused or aggravated by the employment activity. Dr. Bryan noted that twisting of his right ankle aggravated his prior right hip injury. She advised that appellant was totally disabled from work from July 10 to August 10, 2018. Thereafter, appellant could perform limited-duty-work for 30 days through September 10, 2018. In a duty status report (Form CA-17) dated August 9, 2018, Dr. Bryan again noted dates of injuries of May 4 and July 10, 2018. She diagnosed right ankle sprain due to injury. Dr. Bryan advised that appellant could resume work with restrictions on September 10, 2018.

Appellant also submitted medical evidence from Dr. Guillermo A. Pinelo, a general practitioner. In an Attending Physician's Report (Form CA-16) dated August 10, 2018, Dr. Pinelo

noted appellant's history of sciatica. He diagnosed sprain of unspecified ligament of the right ankle, initial encounter, and unspecified sprain of the right hip, initial encounter. Dr. Pinelo indicated that it was undetermined at that time as to whether the diagnosed conditions were caused or aggravated by an employment activity. The period of appellant's disability was also undetermined at that time. Dr. Pinelo advised that he could perform light work with limitations. In a Form CA-17 report dated August 10, 2018, he noted a history that on July 10, 2018 appellant twisted his right ankle. Dr. Pinelo did not provide a diagnosis due to injury, but indicated that appellant's other disabling condition was lower back pain with sciatica. He noted his work restrictions. In Florida state workers' compensation forms dated August 10 and 13, 2018, Dr. Pinelo noted a date of injury of July 10, 2018. He indicated that appellant had work-related right hip and right ankle pain. Dr. Pinelo listed his functional limitations and restrictions. Further, on August 10, 2018 he prescribed physical therapy two times a week, for four weeks to treat appellant's diagnosed sprain of unspecified ligament of the right ankle, initial encounter, and unspecified sprain of the right hip, initial encounter.

In a report dated August 10, 2018, Dr. Ronald S. Pritchard, a Board-certified diagnostic radiologist, noted that x-rays of the right hip and right ankle revealed that no significant or acute process was demonstrated.

Dr. Dimitri Cordova Caballero, a family practitioner, in a Form CA-17 report dated August 13, 2018, noted a history of injury that appellant stepped in a puddle and twisted his ankle on July 10, 2018. He diagnosed ankle/hip sprain due to injury. Dr. Cordova Caballero advised that appellant was able to perform his full-time, regular work duties.

An unsigned summary of visit dated August 13, 2018 from an urgent care center provided diagnoses of sprain of unspecified ligament of the right ankle, initial encounter, right ankle joint pain, and sprain of the right hip, initial encounter.

An unsigned Attending Physician's Report dated August 13, 2018 from an urgent care center noted a history of injury that appellant stepped in a puddle and twisted his ankle. The report provided a diagnosis of right ankle and hip sprain. It was undetermined as to whether the diagnosed condition was caused or aggravated by an employment activity. Appellant was released to return to light-duty work with restrictions.

OWCP subsequently received additional medical evidence. Dr. Bryan, in a return to work note dated August 9, 2018, advised that appellant could return to limited-duty work only on August 10, 2018. In a Form CA-17 duty status report dated August 20, 2018, she described clinical findings of right ankle/hip sprain. Dr. Bryan indicted that appellant had not been advised to resume work. She noted his work restrictions. In a Form CA-16, Attending Physician's Report dated August 20, 2018, Dr. Bryan reiterated appellant's history of injury. She indicated that her findings and whether his condition was caused or aggravated by the employment activity were undetermined. Dr. Bryan advised that he could not return to work.

In a report dated August 25, 2018, Dr. Dustin May, an internist, listed a date of injury of July 10, 2018. He discussed findings on physical examination and reviewed x-ray test results. He provided assessments of sprain of unspecified ligament of the right ankle, initial encounter (primary), right ankle joint pain, and sprain of the right hip, initial encounter. Dr. May, in a state workers' compensation form dated August 25, 2018, again noted a date of injury of July 10, 2018. He related that there were no changes regarding his clinical assessments/determinations since the

last reported visit. Dr. May indicated that appellant had right hip and right ankle pain. He listed his functional limitations and restrictions.

Dr. Pinelo, in a report dated August 25, 2018, reexamined appellant and restated his prior assessments of sprain of unspecified ligament of the right ankle, initial encounter, unspecified sprain of the right hip, initial encounter, and right ankle joint pain. In an undated Form CA-17, he noted that appellant was examined on September 2, 2018, but did not provide a diagnosis due to injury. Dr. Pinelo listed his work restrictions.

In a report dated August 13, 2018, Dr. Dimitri Cordova Caballero, a family practitioner, listed a history that appellant sustained right hip and right ankle injuries on July 10, 2018. He discussed findings on physical examination and reviewed diagnostic test results. Dr. Caballero provided assessments of sprain of unspecified ligament of the right ankle and right hip, initial encounter (primary) and right ankle joint pain. In a September 2, 2018 Florida state workers' compensation form, he again noted a date of injury of July 10, 2018. Dr. Caballero related that there were no changes regarding his clinical assessments/determinations since the last reported visit. He noted that appellant had right hip and right ankle pain. Dr. Caballero listed his functional limitations and restrictions. In an undated Attending Physician's Report, he noted a history that appellant stepped in a puddle of water and twisted his right ankle/right hip. Dr. Caballero did not provide a diagnosis. He indicated that his findings and whether appellant's condition was caused or aggravated by the employment activity were undetermined at that time. Dr. Caballero was released to light-duty work with restrictions.

In a report dated August 20, 2018, Dr. Julio Casas, a Board-certified pediatrician, listed a date of injury of July 10, 2018. He reported findings on physical examination and reviewed diagnostic test results. Dr. Casas provided assessments of sprain of unspecified ligament of the right ankle and right hip, initial encounter (primary), and right ankle joint pain.

By decision dated September 17, 2018, OWCP accepted that the July 10, 2018 employment incident occurred as alleged and that there was a diagnosed condition. However, it denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed condition and the accepted July 10, 2018 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, 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,[4] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.[5] 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.[6]

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. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7]

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 factors.[8] 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

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted July 10, 2018 employment incident.

Dr. Bryan's August 9 and 20, 2018 Form CA-17 duty status reports diagnosed right ankle and right hip sprains due to the July 10, 2018 employment incident. While Dr. Bryan noted employment-related injuries, her opinion regarding causal relationship in these reports was merely conclusory without providing supportive rationale. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was related to an employment incident.[10] In an August 9, 2018 Attending Physician's Report, Dr. Bryan noted a history of the accepted July 10, 2018 employment incident and that appellant had a bullet lodged in his right hip. She checked a box marked "yes" indicating that he had a condition caused or aggravated by the July 10, 2018 employment activity. Dr. Bryan noted that twisting of the right ankle aggravated his prior right hip injury. She advised that he was totally disabled from July 10 to August 10, 2018 and thereafter he could perform limited-duty work for 30 days through September 10, 2018. Dr. Bryan did not provide a firm medical diagnosis. Moreover, the Board has held that, without further explanation or rationale, a

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *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).

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

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 45 ECAB 345 (1989).

[10] *See B.C.*, Docket No. 18-1735 (issued April 23, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

checked box is insufficient to establish causation.[11] Dr. Bryan provided return to work notes dated July 12 and August 9, 2018 in which she indicated that appellant sustained a right hip injury and addressed his work capacity. Again, she did not provide a firm medical diagnosis. Further, Dr. Bryan did not offer an opinion finding that appellant's injury was caused or aggravated by the accepted July 10, 2018 employment incident. The Board has held that a medical report is of no probative value if it does not offer a specific opinion on whether the accepted employment incident caused or aggravated the claimed condition.[12] Dr. Bryan's July 12, 2018 report diagnosed right hip pain and addressed appellant's work capacity. The Board notes that the assessment of pain is not considered a diagnosis as it merely refers to symptoms of the underlying condition.[13] Moreover, Dr. Bryan did not opine on the cause of appellant's condition.[14] For these reasons, the Board finds that Dr. Bryan's reports are insufficient to establish appellant's burden of proof.

Dr. Pinelo's August 10, 2018 state workers' compensation form indicated that appellant sustained work-related right hip and right ankle pain on July 10, 2018. As stated, pain is a symptom, not a compensable diagnosis.[15] Moreover, Dr. Pinelo did not explain how he arrived at his conclusion.[16] While Dr. Pinelo, in an August 10, 2018 Form CA-16, Attending Physician's Report, diagnosed unspecified sprain of right ankle ligament and unspecified sprain of the right hip, initial encounter, he advised that it was undetermined whether the diagnosed conditions were work related. As such, he did not clearly identify the cause of appellant's right ankle and right hip conditions or otherwise provide an opinion that his conditions were causally related to the accepted July 10, 2018 employment incident. The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[17] Dr. Pinelo's Form CA-17 duty status reports dated August 10 and 25, 2018 noted a history of injury that appellant twisted his right ankle on July 10, 2018 and listed his work restrictions. However, he did not provide a firm medical diagnosis or an opinion on causal relationship.[18] Although Dr. Pinelo indicated that appellant's other disabling condition was lower back pain with sciatica, he did not opine that this condition was caused or aggravated by the accepted work incident.[19] In a note dated August 10, 2018 and report dated August 25, 2018, he diagnosed sprain of unspecified ligament of the right ankle, initial encounter, and unspecified sprain of the right hip, initial encounter, and prescribed physical therapy to treat

[11] *See P.L.*, Docket No. 19-0268 (issued July 9, 2019); *S.G.*, Docket No. 18-0209 (issued October 4, 2018); *R.A.*, Docket No. 17-1472 (issued December 6, 2017); *Sedi L. Graham*, 57 ECAB 494 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[12] *See C.R.*, Docket No. 18-1805 (issued May 10, 2019); *J.M.*, Docket No. 16-0306 (issued May 5, 2016).

[13] *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, not a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[14] *See supra* note 12.

[15] *See supra* note 13.

[16] *Supra* note 10.

[17] *See B.S.*, Docket No. 17-1575 (issued December 5, 2017); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

[18] *Supra* note 12.

[19] *Id.*

appellant's conditions. Dr. Pinelo again did not provide an opinion on causal relationship.[20] For these reasons, the Board finds that his reports are insufficient to establish appellant's burden of proof.

Similarly, the August 13, 20, and 25, 2018 reports and state workers' compensation forms of Dr. Caballero, Dr. Casas, and Dr. May, which listed a date of injury as July 10, 2018, provided assessments of sprain of unspecified ligament of the right ankle, initial encounter, right hip sprain, and right ankle joint pain, and listed appellant's functional limitations and restrictions, did not offer an opinion as to whether the accepted employment incident caused or aggravated appellant's conditions and limitations and restrictions.[21] Although Dr. Caballero's August 13, 2018 Form CA-17 duty status report diagnosed ankle/hip sprain due to the July 10, 2018 employment incident, he did not explain how the accepted work incident caused appellant's condition.[22] Further, in an undated Attending Physician's Report, he did not provide a firm diagnosis or opinion on causal relationship.[23] Dr. Caballero related that his findings and an opinion on the causal relationship between appellant's condition and the July 10, 2018 employment activity were undetermined at that time. The Board finds that the reports of Dr. Caballero, Dr. Casas, and Dr. May are insufficient to establish appellant's claim.

Dr. Pritchard's diagnostic test report failed to provide firm right hip and right ankle diagnoses resulting from the July 10, 2018 employment incident.[24] Diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[25]

The unsigned summary of visit and Attending Physician's report (Form CA-16 dated August 13, 2018 are of no probative value regarding appellant's claim for a July 10, 2018 employment injury as the authors cannot be identified as physicians within the meaning of FECA.[26]

As the case record does not contain a well-reasoned medical opinion establishing causal relationship, the Board finds that appellant has not met his burden of proof.[27]

On appeal counsel contends that OWCP's September 17, 2018 decision is contrary to fact and law. For the foregoing reasons, the Board finds that the medical evidence of record is

[20] *Id.*

[21] *Id.*

[22] *See supra* note 10.

[23] *See supra* note 12.

[24] *See M.D.*, Docket No. 18-0709 (issued September 4, 2018); *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

[25] *See M.D., id.*; *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[26] *See V.J.*, Docket No. 18-0452 (issued July 3, 2018); *L.D.*, Docket No. 17-1808 (issued December 28, 2017); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[27] *See B.C., supra* note 10.

insufficient to establish that appellant sustained a right ankle condition causally related to the accepted July 10, 2018 employment incident.

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 to establish an injury causally related to the accepted July 10, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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