

**United States Department of Labor  
Employees' Compensation Appeals Board**

T.L., Appellant	)	
	)	
and	)	Docket No. 19-1467
	)	Issued: July 24, 2020
U.S. POSTAL SERVICE, CASTLE SHANNON	)	
POST OFFICE, Pittsburgh, PA, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 27, 2019 appellant, through counsel, filed a timely appeal from a June 3, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish a left lower extremity condition causally related to the accepted March 30, 2018 employment incident.

## FACTUAL HISTORY

On April 19, 2018 appellant, then a 37-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on March 30, 2018 she sustained a stress fracture of the neck of her left femur when she tripped on a cracked sidewalk and fell on her left knee while in the performance of duty. On the reverse side of the claim form, her immediate supervisor asserted that, although she claimed a March 30, 2018 injury, she did not report it to him until April 19, 2018. Appellant stopped work on April 5, 2018.

In a narrative statement dated April 19, 2018, appellant provided further details of her March 30, 2018 fall and indicated that her left hip pain increased over the period March 31 through April 2, 2018. She advised that on April 3, 2018 her left leg felt weak and she tripped on a step while delivering mail and fell on her left knee. Appellant noted that she was able to finish her work shift on April 3, 2018. She indicated that she underwent open reduction internal fixation (ORIF) surgery on April 9, 2018 in order to stabilize the stress fracture of her left femur neck.<sup>3</sup>

In a letter dated April 20, 2018, the employing establishment controverted appellant's claim, noting the lack of medical evidence needed to establish causal relationship between the March 30, 2018 incident and her left lower extremity condition.

Brian Oswald, a physician assistant, indicated in an April 27, 2018 note that appellant was under his care for a left hip fracture and was temporarily disabled until approximately August 1, 2019.

In a development letter dated May 24, 2018, OWCP requested that appellant submit additional evidence in support of her claim for a March 30, 2018 traumatic injury. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On June 18, 2018 OWCP received appellant's completed questionnaire dated June 14, 2018 in which she discussed the March 30, 2018 fall and indicated that she sustained no further injury after March 30, 2018. Appellant provided a timeline regarding the course of her increasing left lower extremity symptoms from March 30 through April 5, 2018.

In an attending physician's report (Form CA-20) dated May 29, 2018, Dr. Ivan Tarkin, a Board-certified orthopedic surgeon, listed the date of injury as March 30, 2018 and the "history of the employment injury" as left hip fracture. He diagnosed left hip fracture and checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by an employment activity. Dr. Tarkin noted that he had performed ORIF surgery to treat the left hip fracture and

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<sup>3</sup> There is no indication in the case record that OWCP has authorized the referenced April 9, 2018 surgery.

that appellant was totally disabled from work from April 5, 2018 through approximately August 1, 2018.

In a letter dated May 30, 2018, Dr. Tarkin noted that he had seen appellant in his office that day due to her stress fracture, and that she would return in two months for further evaluation of her prognosis.

By decision dated June 25, 2018, OWCP accepted that the March 30, 2018 fall occurred in the performance of duty, as alleged. However, it denied appellant's traumatic injury claim, finding that she had not submitted sufficient evidence to meet her burden of proof to establish causal relationship between a medical condition and the accepted March 30, 2018 employment incident.

On July 2, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted an April 6, 2018 report from Dr. Jared Crasto, a Board-certified orthopedic surgeon, who indicated that she reported multiple ground-level falls in the previous week. She advised that she landed on her left knee and developed pain in her left hip. On physical examination of the left lower extremity, Dr. Crasto observed pain with leg-rolling and straight leg raising. He diagnosed left femoral neck stress fracture, noting that a magnetic resonance imaging (MRI) scan demonstrated this condition. Dr. Crasto indicated that ORIF surgery would be performed if appellant's left hip was not infected.

In a discharge report dated April 12, 2018, Dr. Rebecca Mancoll, a Board-certified internist, and Dr. Sameera Nadimpalli indicated in the history section of the report that appellant reported suffering hip, thigh, and back pain "in the context of multiple recent falls" and was found to have a stress injury to the left femoral neck, as well as left hip effusion. The physicians further noted in the history section that the etiology of appellant's condition was thought to be overuse. Dr. Mancoll and Dr. Nadimpalli provided a discharge diagnosis of stress fracture and indicated that an April 5, 2018 MRI scan of her left lower extremity demonstrated marrow edema about the medial aspect of the left femoral neck, moderate-sized left-sided joint effusion, and marrow edema about the left ischial tuberosity adjacent to the hamstring.

In an April 27, 2018 report, Dr. Tarkin recommended continued weight-bearing activity and noted that appellant was unable to return to work until an estimated return date of August 1, 2018. He noted that an x-ray of the left hip showed maintenance of alignment of her left hip fracture.<sup>4</sup>

Dr. Karl J. Henrikson, a Board-certified orthopedic surgeon, noted in a May 30, 2018 report that appellant had remaining groin pain and mild lateral hip soreness as she ambulated with a cane. He diagnosed status post sliding hip screw fixation of a left femoral neck stress fracture.

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<sup>4</sup> Appellant submitted an April 6, 2018 x-ray which contained an impression of no displaced fractures of the left femur and no radiographic correlate of the suspected stress fracture involving the left femoral neck. An April 27, 2018 x-ray contained an impression of intact and unchanged left hip internal fixation hardware without progression of the femoral neck stress fracture. The case record also contains a copy of Dr. Tarkin's April 9, 2018 report of left femur surgery.

Dr. Henrikson opined that appellant likely sustained her stress fracture due to increased ambulation as a mail carrier and became symptomatic due to her fall.

During the hearing held on November 16, 2018 appellant testified regarding her March 30, 2018 fall and the treatment she received for her left lower extremity condition. She indicated that she did not sustain a new injury when she fell again on April 3, 2018.

After the hearing, appellant submitted a copy of the previously submitted May 30, 2018 report of Dr. Henrikson in a version which was cosigned by Dr. Tarkin. She also submitted a July 11, 2018 report in which Dr. Tarkin observed that her pain had improved compared to its presurgery state, but that she still had lateral hip pain. In an October 10, 2018 report, Dr. Tarkin noted that appellant, who remained off work, had been bearing weight as tolerated on the left leg, but still experienced some left hip irritation and muscle aches.<sup>5</sup>

By decision dated January 31, 2019, OWCP's hearing representative affirmed the June 25, 2018 decision, finding that the medical evidence of record did not establish causal relationship between appellant's left lower extremity condition and the accepted March 30, 2018 employment incident.

On March 5, 2019 appellant, through counsel, requested reconsideration of the January 31, 2019 decision. Attached to the request was a narrative report from Dr. Tarkin dated February 22, 2019. Dr. Tarkin noted that appellant had presented on April 5, 2018 with left hip pain after multiple reported falls at work. He indicated that, consistent with overuse syndrome, her MRI scan revealed tendinitis of ipsilateral hip flexors, abductors, and hamstrings, as well as hip effusion. Dr. Tarkin noted that appellant underwent surgery on April 9, 2018 without complication and noted that a computerized tomography scan demonstrated that her left femoral fracture was healing without evidence of avascular necrosis. He advised that on November 28, 2018 she reporting having continuing pain and he informed her that hardware irritation was a potential cause. Dr. Tarkin noted that he and appellant mutually agreed that a physical job such as carrying mail would be unrealistic at that point, and sedentary work was suggested as the most reasonable form of employment. On January 30, 2019 appellant reported continuing hip and groin pain and also complained of new back pain with radicular symptoms. Dr. Tarkin indicated that she sustained a femoral neck stress fracture "from presumed overuse."

By decision dated June 3, 2019, OWCP denied modification of the January 31, 2019 decision.

### **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

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<sup>5</sup> Appellant also submitted an October 10, 2018 x-ray of the left hip which contained an impression of status post ORIF of a left femoral neck stress fracture without hardware complication or fracture malalignment.

time limitation period of FECA,<sup>6</sup> 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 to the employment injury.<sup>7</sup> 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.<sup>8</sup>

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>9</sup> The second component is whether the employment incident caused a personal injury.<sup>10</sup>

Rationalized medical opinion evidence is 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 incident.<sup>11</sup> 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.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left lower extremity condition causally related to the accepted March 30, 2018 employment incident.

In support of her claim for a March 30, 2018 traumatic injury, appellant submitted a May 30, 2018 report from Dr. Tarkin and Dr. Henrikson who noted that she had remaining groin pain and mild lateral hip soreness as she ambulated with a cane. The physicians diagnosed status post sliding hip screw fixation of a left femoral neck stress fracture. Dr. Tarkin and Dr. Henrikson opined that appellant likely sustained her stress fracture due to increased ambulation as a mail carrier and “became symptomatic due to [appellant’s] fall.” Although Dr. Tarkin and Dr. Henrikson generally mentioned a fall, they did not specifically identify the March 30, 2018 fall at work as a causative factor or otherwise provide a rationalized medical opinion explaining

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<sup>6</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

<sup>8</sup> *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).

<sup>9</sup> *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>10</sup> *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

<sup>12</sup> *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

how that fall would have been competent to cause a diagnosed condition. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.<sup>13</sup> Therefore, this report is insufficient to establish appellant's claim.

In a form report dated May 29, 2018, Dr. Tarkin listed the date of injury as March 30, 2018 and the "history of the employment injury" as left hip fracture. He diagnosed left hip fracture and checked a box marked "Yes" to indicate that the diagnosed condition was caused or aggravated by an employment activity. Appellant's burden of proof includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.<sup>14</sup> Dr. Tarkin provided no rationale for his opinion on causal relationship. The Board has held that when a physician's opinion on causal relationship consists only of checking a box marked "Yes" to a form question, without more by the way of medical rationale, that opinion is of limited probative value and is insufficient to establish causal relationship.<sup>15</sup> As such, Dr. Tarkin's May 29, 2018 report is insufficient to discharge appellant's burden of proof.

In a February 22, 2019 report, Dr. Tarkin noted that appellant had presented on April 5, 2018 with left hip pain after multiple reported falls at work. He indicated that, consistent with overuse syndrome, her MRI scan revealed tendinitis of ipsilateral hip flexors, abductors, and hamstrings, as well as hip effusion. Dr. Tarkin noted that appellant sustained a femoral neck stress fracture "from presumed overuse." He referenced an overuse injury to the left lower extremity, but he did not identify the source of this ostensible overuse and, therefore, this aspect of his report fails to provide an opinion that there was an employment-related cause for her left lower extremity condition.<sup>16</sup> The Board notes that this report is of no probative value regarding appellant's claimed March 30, 2018 traumatic injury because Dr. Tarkin did not provide an opinion that her left lower extremity condition was related to the accepted March 30, 2018 employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>17</sup> Therefore, Dr. Tarkin's February 22, 2018 report is insufficient to establish appellant's claim.

Appellant submitted other reports in support of her traumatic injury claim, but these reports are of no probative value because they do not contain an opinion that a diagnosed left lower extremity condition was causally related to the accepted March 30, 2018 employment incident. In a letter dated May 30, 2018, Dr. Tarkin noted that he had seen her in his office that day due to her stress fracture. On April 6, 2018 Dr. Crasto indicated that appellant reported multiple ground-

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<sup>13</sup> See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>14</sup> *J.A.*, Docket No. 18-1586 (issued April 9, 2019); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

<sup>15</sup> *Id.*

<sup>16</sup> Dr. Tarkin also indicated that on November 28, 2018 appellant reported continuing pain and he informed her that hardware irritation from her April 9, 2018 left femur surgery was a potential cause. However, it is noted that this mention of a potential cause for her symptoms would not support her claim for an employment injury as the April 9, 2018 surgery has not been accepted as necessitated by an employment condition.

<sup>17</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

level falls in the previous week, and he diagnosed left femoral neck stress fracture. In an April 12, 2018 report, Dr. Mancoll and Dr. Nadimpalli noted in the history section of the report that the etiology of her left lower extremity condition was thought to be overuse, but they did not provide their own opinion that there was an employment-related cause for the condition.<sup>18</sup> In an April 27, 2018 report, Dr. Tarkin recommended continued weight-bearing activity and, in a July 11, 2018 report, he observed that appellant's pain had improved compared to its presurgery state. On October 10, 2018 he noted that she had been bearing weight as tolerated on the left leg, but still experienced some left hip irritation and muscle aches. Because these reports do not contain an opinion that, a diagnosed condition was causally related to the accepted March 30, 2018 employment incident, they are of no probative value regarding appellant's claim for a March 30, 2018 traumatic injury to the left lower extremity.<sup>19</sup>

Appellant submitted several diagnostic reports, including an MRI scan dated April 5, 2018 and x-rays dated April 6 and 27 and October 10, 2018. The Board has held that diagnostic test reports, standing alone, lack probative value as they do not provide an opinion on causal relationship between a given employment incident and a diagnosed condition.<sup>20</sup> As such, these reports are insufficient to establish appellant's claim.

Appellant also submitted an April 27, 2018 report of Mr. Oswald, a physician assistant. This report, however, is of no probative value on the underlying issue of this case as physician assistants are not considered physicians as defined under FECA.<sup>21</sup>

As appellant has not submitted rationalized medical evidence establishing that her left lower extremity condition is causally related to the accepted March 30, 2018 employment incident, the Board finds that she has not met her burden of proof.<sup>22</sup>

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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<sup>18</sup> Dr. Mancoll and Dr. Nadimpalli noted that appellant reported multiple recent falls and provided a discharge diagnosis of stress fracture.

<sup>19</sup> See *supra* note 17.

<sup>20</sup> C.S., Docket No. 19-1279 (issued December 30, 2019).

<sup>21</sup> Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *A.M.*, Docket No. 20-0069 (issued June 25, 2020) (a physician assistant, however, is not considered a "physician" as defined under FECA).

<sup>22</sup> See *S.K.*, Docket No. 19-0391 (issued December 13, 2019).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a left lower extremity condition causally related to the accepted March 30, 2018 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 3, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 24, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board