United States Department of Labor
Employees' Compensation Appeals Board

T.A., Appellant	)	
and	)	**Docket No. 22-0955**
	)	**Issued: December 16, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Miami, FL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 9, 2022 appellant filed a timely appeal from a January 21, 2022 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 a medical condition causally related to the accepted December 1, 2021 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the January 21, 2022 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*.

FACTUAL HISTORY

On December 3, 2021 appellant, then a 27-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on December 1, 2021 she injured her left heel and ankle when her left heel got caught underneath equipment and she fell to the floor while in the performance of duty. Appellant's supervisor acknowledged on the claim form that the alleged injury occurred in the performance of duty and that appellant had not lost time from work due to the incident.

On December 1, 2021 appellant was seen by Dr. Brent J. Whitley, a Board-certified emergency medicine specialist, who noted appellant's complaint of left ankle pain and prescribed naproxen. In a December 1, 2021 state workers' compensation form, Dr. Whitley reported that appellant had sustained a work-related incident that day. He provided final diagnoses of work-related injury and left foot pain. A December 1, 2021 after visit summary noted appellant's medications.

In a December 2, 2021 statement, appellant described the claimed December 1, 2021 incident.

In a December 14, 2021 development letter, OWCP advised appellant of the deficiencies in her claim and instructed her as to the medical evidence necessary to establish her claim. It afforded her 30 days to respond.

In response, OWCP received a December 3, 2021 report from a certified physician assistant. Appellant's December 1, 2021 date of injury was noted. Her diagnoses were listed as left Achilles tendon injury, acute left ankle pain, and left heel contusion.

OWCP also received reports from a physical therapist dated from December 3 to 13, 2021.

Duty status reports (Form CA-17) dated December 3, 6, 13, 2021 and January 4, 2022, were received which noted appellant's December 1, 2021 date of injury and related findings of left ankle tenderness to palpation. The signature on the forms is illegible.

Work activity status reports dated December 6, 13, 2021 and January 4, 2022; as well as a January 4, 2022 state workers' compensation report from certified physician assistants were received which diagnosed unspecified injury of left Achilles tendon and pain in the left ankle and joints of the left foot. The December 13, 2021 work activity status report also noted a diagnosis of left heel contusion.

In a December 13, 2021 transcription note, a certified physician assistant noted that the history of the December 1, 2021 work incident was previously documented. Appellant's physical examination findings were provided and assessments of left Achilles tendon injury, acute left ankle pain, and left heel contusion were listed. On December 14, 2021 Dr. Jaime A. B. Tobar, a family medical specialist, electronically countersigned the transcription note and provided functional limitations for the left ankle.

By decision dated January 21, 2022, OWCP denied appellant's traumatic injury claim. It found that the December 1, 2021 incident occurred as alleged, however, the record did not contain a medical diagnosis in connection with the accepted December 1, 2021 employment incident.

OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[3] 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 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 and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[7]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.[9] The weight of the 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.[10]

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[3] *See supra* note 1.

[4] *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] *P.S.*, Docket No. 18-1588 (issued March 5, 2019); *James Mack*, 43 ECAB 321 (1991).

Pursuant to Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6a (June 2011), if a condition reported is a minor one, such as a burn, laceration, insect sting, or animal bite, which can be identified on visual inspection by a lay person, a case may be accepted without a medical report and no development of the case need be undertaken, if the injury was witnessed or reported promptly, and no dispute exists as to the occurrence of an injury; and no time was lost from work due to disability.[11] This section of OWCP's procedures further states that in cases of serious injury (motor vehicle accidents, stabbings, shootings, *etc.*) if the employing establishment does not dispute the facts of the case, and there are no questionable circumstances, the case may be accepted for a minor condition, such as laceration, without a medical report, while simultaneously developing the case for other more serious conditions. This is true even if there is lost time due to such a serious injury.[12]

ANALYSIS -- ISSUE 1

The Board finds that appellant has met her burden of proof to establish a left heel contusion causally related to the accepted December 1, 2021 employment incident.

On December 3 and 13, 2021 a physician assistant noted the date of injury and diagnosed a left heel contusion. On December 14, 2021 Dr. Tobar electronically countersigned the December 13, 2021 transcription note from the physician assistant, which noted the date of the December 1, 2021 work incident and which provided assessments of left Achilles tendon injury, acute left ankle pain and left heel contusion. The diagnosis of contusion was consistent with appellant's physical examination and the mechanism of injury. This evidence is sufficient to meet the standards set forth in OWCP's procedures for accepting a left ankle contusion as it was a minor condition identifiable on visual inspection by a lay person.[13] Further development of the claim to obtain a rationalized medical report was not necessary to establish the diagnosis of left heel contusion. As the evidence of record establishes that appellant's employment incident resulted in

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.800.6a (June 2011).

[12] *Id*.

[13] *Supra* note 11; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3c (January 2013). *See also A.J.*, Docket No. 20-0484 (issued September 2, 2020); *S.K.*, Docket No. 18-1411 (issued July 22, 2020); *B.C.*, Docket No. 20-0498 (issued August 27, 2020) (the Board accepted lumbar contusion as causally related to the accepted employment incident); *S.H.*, Docket No. 20-0113 (issued June 24, 2020) (the Board accepted a right ankle contusion as causally related to the accepted employment incident); *M.A.*, Docket No. 13-1630 (issued June 18, 2014).

a visible injury, the Board finds that she has met her burden of proof to establish a left ankle contusion causally related to the accepted December 1, 2021 employment incident.[14]

Accordingly, the January 21, 2022 decision is reversed to find that the claim is accepted for left heel contusion. The case will be remanded to OWCP for payment of medical expenses for appellant's diagnosed left heel contusion.

The Board also finds that appellant has not established an additional condition causally related to the accepted December 1, 2021 employment incident.

Dr. Tobar also diagnosed left Achilles tendon injury and acute left ankle pain and Dr. Whitley, in his December 1, 2021 report, diagnosed work-related injury and left foot pain. The Board has consistently held that "pain" and "injury" are descriptions of symptoms and are not firm medical diagnoses.[15] Thus, Dr. Whitley's assessment of work-related injury and left foot pain and Dr. Tobar's additional assessments of left Achilles tendon injury and acute left ankle pain are not considered firm medical diagnoses. The reports from both Dr. Tobar and Dr. Whitley are therefore insufficient to satisfy appellant's burden of proof.[16]

The remaining medical evidence of record consists of reports from certified physician assistants and a physical therapist, noting appellant's physical examination findings. The Board has held that the reports of a physician assistant and physical therapist are of no probative value as physician assistants and physical therapists are not considered physicians as defined under FECA and, therefore, their medical findings and opinions are insufficient to establish entitlement to compensation benefits.[17]

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.

[14] *Id.*; *see also J.B.*, Docket No. 21-1322 (issued April 4, 2022).

[15] *See C.H.*, Docket No. 20-0228 (issued October 7, 2020); *T.G.*, Docket No. 19-0904 (issued November 25, 2019). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

[16] *P.S.*, *supra* note 10.

[17] Section 8101(2) of FECA provides that a 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013) *N.C.*, Docket No. 21-0934 (issued February 7, 2022) (physical therapists are not considered physicians as defined under FECA); *M.J.*, Docket No. 19-1287 (issued January 13, 2020) (physician assistants are not considered physicians as defined under FECA); *P.H.*, Docket No. 19-0119 (issued July 5, 2019) (physician assistants are not considered physicians as defined under FECA); *T.K.*, Docket No. 19-0055 (issued May 2, 2019) (physician assistants and physical therapists are not considered physicians as defined by FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA).

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a left heel contusion causally related to the accepted December 1, 2021 employment incident. The Board further finds that appellant has not established an additional condition causally related to the accepted December 1, 2021 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2022 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 16, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board